SECURITIES AND EXCHANGE COMMISSION

This file is maintained pursuant to the Freedom of Information Act (5 U.S.C. 552). It contains a copy of each decision, order, rule or similar action of the Commission, for April 2008, with respect to which the final votes of individual Members of the Commission are required to be made available for public inspection pursuant to the provisions of that Act. Commissioner Nazareth was Commissioner from August 4, 2005 to January 31, 2008.

Unless otherwise noted, each of the following individual Members of the Commission voted affirmatively upon each action of the Commission shown in the file:

CHRISTOPHER COX, CHAIRMAN

PAUL S. ATKINS, COMMISSIONER

ANNETTE L. NAZARETH, COMMISSIONER

KATHLEEN L. CASEY, COMMISSIONER

2 Documents

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
April 1, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13002

In the Matter of **Achieva Development Corp.,** **Acme Metals, Inc.,** **Act International, Inc.,** **Active Assets & Associates, Inc.,** **ADM Enterprises, Inc., and** **Advanced Interactive, Inc.,** **Respondents.**	**ORDER INSTITUTING PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Achieva Development Corp., Acme Metals, Inc., Act International, Inc., Active Assets & Associates, Inc., ADM Enterprises, Inc., and Advanced Interactive, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Achieva Development Corp. (CIK No. 1117213) is a British Columbia corporation located in Vancouver, British Columbia, Canada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Achieva is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended October 31, 2001, which reported a net loss of $2.6 million (Canadian) since inception in 1986.

2. Acme Metals, Inc. (CIK No. 883702) is a dissolved Delaware corporation located in Riverdale, Illinois with classes of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Acme is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 2000. On September 28, 1998, Acme filed a

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Chapter 11 petition with the U.S. Bankruptcy Court for the District of Delaware, and the case was terminated on September 30, 2004.

3. Act International, Inc. (CIK No. 1113601) is a permanently revoked Nevada corporation located in Salt Lake City, Utah with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Act International is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended July 31, 2001.

4. Active Assets & Associates, Inc. (CIK No. 1112984) is a British Columbia corporation located in Vancouver, British Columbia, Canada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Active Assets is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended November 30, 2000, which reported a net loss of $8,192 (Canadian) for fiscal year 2000.

5. ADM Enterprises, Inc. (CIK No. 1137080) is a dissolved North Dakota corporation located in Bismarck, North Dakota with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). ADM is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended October 31, 2002, which reported a net loss of $11,868 for the prior nine months.

6. Advanced Interactive, Inc. (CIK No. 1077919) is a revoked Nevada corporation located in Vancouver, British Columbia, Canada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Advanced is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2000, which reported a net loss of $132,272 for the prior nine months.

B. DELINQUENT PERIODIC FILINGS

7. As discussed in more detail above, all of the respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

8. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports (Forms 10-K, 10-KSB, or 20-F), and Rule 13a-13 requires domestic issuers to file quarterly reports (Forms 10-Q or 10-QSB). Rule 13a-16 requires foreign private issuers to furnish quarterly and other reports to the Commission under cover of Form 6-K if they make or are required to make the information public under the laws of the jurisdiction of

their domicile or in which they are incorporated or organized; if they file or are required to file information with a stock exchange on which their securities are traded and the information was made public by the exchange; or if they distribute or are required to distribute information to their security holders.

9. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 or 13a-16 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Nancy M. Morris
Secretary

Attachment

Appendix 1

Chart of Delinquent Filings
In the Matter of Achieva Development Corp., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Achieva Development Corp.					
	20-F	10/31/02	04/30/02	Not filed	71
	20-F	10/31/03	04/30/03	Not filed	59
	20-F	10/31/04	04/30/04	Not filed	47
	20-F	10/31/05	05/02/05	Not filed	34
	20-F	10/30/06	05/01/06	Not filed	22
Total Filings Delinquent	5				
Acme Metals, Inc.					
	10-QSB	03/31/01	05/15/01	Not filed	82
	10-QSB	06/30/01	08/14/01	Not filed	79
	10-QSB	09/30/01	11/14/01	Not filed	76
	10-KSB	12/31/01	04/01/02	Not filed	71
	10-QSB	03/31/02	05/15/02	Not filed	70
	10-QSB	06/30/02	08/14/02	Not filed	67
	10-QSB	09/30/02	11/14/02	Not filed	64
	10-KSB	12/31/02	03/31/03	Not filed	60
	10-QSB	03/31/03	05/15/03	Not filed	58
	10-QSB	06/30/03	08/14/03	Not filed	55
	10-QSB	09/30/03	11/14/03	Not filed	52
	10-KSB	12/31/03	03/30/04	Not filed	48
	10-QSB	03/31/04	05/17/04	Not filed	46
	10-QSB	06/30/04	08/16/04	Not filed	43

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Acme Metals, Inc.					
	10-QSB	09/30/04	11/15/04	Not filed	40
	10-KSB	12/31/04	03/31/05	Not filed	36
	10-QSB	03/31/05	05/16/05	Not filed	34
	10-QSB	06/30/05	08/15/05	Not filed	31
	10-QSB	09/30/05	11/14/05	Not filed	28
	10-KSB	12/31/05	03/31/06	Not filed	24
	10-QSB	03/31/06	05/15/06	Not filed	22
	10-QSB	06/30/06	08/14/06	Not filed	19
	10-QSB	09/30/06	11/14/06	Not filed	16
	10-KSB	12/31/06	04/02/07	Not filed	11
	10-QSB	03/31/07	05/15/07	Not filed	10
	10-QSB	06/30/07	08/14/07	Not filed	7
	10-QSB	09/30/07	11/14/07	Not filed	4
Total Filings Delinquent	27				
Act International, Inc.					
	10-KSB	10/31/01	01/29/02	Not filed	74
	10-QSB	01/31/02	03/18/02	Not filed	72
	10-QSB	04/30/02	06/14/02	Not filed	69
	10-QSB	07/31/02	09/16/02	Not filed	66
	10-KSB	10/31/02	01/29/03	Not filed	62
	10-QSB	01/31/03	03/17/03	Not filed	60
	10-QSB	04/30/03	06/16/03	Not filed	57
	10-QSB	07/31/03	09/15/03	Not filed	54
	10-KSB	10/31/03	01/29/04	Not filed	50
	10-QSB	01/31/04	03/16/04	Not filed	48
	10-QSB	04/30/04	06/14/04	Not filed	45
	10-QSB	07/31/04	09/14/04	Not filed	42
	10-KSB	10/31/04	01/31/05	Not filed	38
	10-QSB	01/31/05	03/17/05	Not filed	36
	10-QSB	04/30/05	06/14/05	Not filed	33
	10-QSB	07/31/05	09/14/05	Not filed	30

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Act International, Inc.					
	10-KSB	10/31/05	01/30/06	Not filed	26
	10-QSB	01/31/06	03/17/06	Not filed	24
	10-QSB	04/30/06	06/14/06	Not filed	21
	10-QSB	07/31/06	09/14/06	Not filed	18
	10-KSB	10/31/06	01/29/07	Not filed	14
	10-QSB	01/31/07	03/19/07	Not filed	12
	10-QSB	04/30/07	06/14/07	Not filed	9
	10-QSB	07/31/07	09/14/07	Not filed	6
	10-KSB	10/31/07	01/29/08	Not filed	2
	10-QSB	01/31/08	03/17/08	Not filed	0
Total Filings Delinquent	26				
Active Assets & Associates, Inc.					
	20-F	11/30/01	05/31/02	Not filed	70
	20-F	11/30/02	06/02/03	Not filed	57
	20-F	11/30/03	05/31/04	Not filed	46
	20-F	11/30/04	05/31/05	Not filed	34
	20-F	11/30/05	05/31/06	Not filed	22
	20-F	11/30/06	05/31/07	Not filed	10
Total Filings Delinquent	6				
ADM Enterprises, Inc.					
	10-KSB	01/31/03	05/01/03	Not filed	58
	10-QSB	04/30/03	06/16/03	Not filed	57
	10-QSB	07/31/03	09/15/03	Not filed	54
	10-QSB	10/31/03	12/15/03	Not filed	51
	10-KSB	01/31/04	04/30/04	Not filed	47
	10-QSB	04/30/04	06/14/04	Not filed	45
	10-QSB	07/31/04	09/14/04	Not filed	42
	10-QSB	10/31/04	12/15/04	Not filed	39
	10-KSB	01/31/05	05/02/05	Not filed	34

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
ADM Enterprises, Inc.					
	10-QSB	07/31/05	09/14/05	Not filed	30
	10-QSB	10/31/05	12/15/05	Not filed	27
	10-KSB	01/31/06	05/01/06	Not filed	22
	10-QSB	04/30/06	06/14/06	Not filed	21
	10-QSB	07/31/06	09/14/06	Not filed	18
	10-QSB	10/31/06	12/15/06	Not filed	15
	10-KSB	01/31/07	05/01/07	Not filed	10
	10-QSB	04/30/07	06/14/07	Not filed	9
	10-QSB	07/31/07	09/14/07	Not filed	6
	10-QSB	10/31/07	12/17/07	Not filed	3
Total Filings Delinquent	19				
Advanced Interactive, Inc.					
	10-KSB	12/31/00	04/02/01	Not filed	83
	10-QSB	03/31/01	05/15/01	Not filed	82
	10-QSB	06/30/01	08/14/01	Not filed	79
	10-QSB	09/30/01	11/14/01	Not filed	76
	10-KSB	12/31/01	04/01/02	Not filed	71
	10-QSB	03/31/02	05/15/02	Not filed	70
	10-QSB	06/30/02	08/14/02	Not filed	67
	10-QSB	09/30/02	11/14/02	Not filed	64
	10-KSB	12/31/02	03/31/03	Not filed	60
	10-QSB	03/31/03	05/15/03	Not filed	58
	10-QSB	06/30/03	08/14/03	Not filed	55
	10-QSB	09/30/03	11/14/03	Not filed	52
	10-KSB	12/31/03	03/30/04	Not filed	48
	10-QSB	03/31/04	05/17/04	Not filed	46
	10-QSB	06/30/04	08/16/04	Not filed	43
	10-QSB	09/30/04	11/15/04	Not filed	40
	10-KSB	12/31/04	03/31/05	Not filed	36
	10-QSB	03/31/05	05/16/05	Not filed	34

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Advanced Interactive, Inc.					
	10-QSB	06/30/05	08/15/05	Not filed	31
	10-QSB	09/30/05	11/14/05	Not filed	28
	10-KSB	12/31/05	03/31/06	Not filed	24
	10-QSB	03/31/06	05/15/06	Not filed	22
	10-QSB	06/30/06	08/14/06	Not filed	19
	10-QSB	09/30/06	11/14/06	Not filed	16
	10-KSB	12/31/06	04/02/07	Not filed	11
	10-QSB	03/31/07	05/15/07	Not filed	10
	10-QSB	06/30/07	08/14/07	Not filed	7
	10-QSB	09/30/07	11/14/07	Not filed	4
Total Filings Delinquent	28				

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 57635 / April 8, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13003

In the Matter of **Craig J. Shaber,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Craig J. Shaber ("Respondent" or "Shaber") pursuant to Rule 102(e)(3) of the Commission's Rules of Practice.[1]

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the

1 Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any attorney . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

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Commission, or to which the Commission is a party and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III., Paragraph 2, below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Shaber, age 48, is an attorney licensed to practice in California.

2. On September 30, 2003, the Commission filed a complaint against Shaber and others in *SEC v. Craig J. Shaber, et al.* (Civil Action No. 3:03-CV-2247/NDTX). On November 2, 2007, the court entered an order permanently enjoining Shaber, by consent, from future violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933, and Sections 10(b), 13(d) and 16(a) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-13, 13d-1, 16a-2 and 16a-3 thereunder. Shaber was ordered to pay $200,000 in disgorgement relief.

3. The Commission's complaint alleged that from 1998 to 2002 Shaber, assisted by an associate, engaged in an elaborate scheme to manufacture and sell 18 public shell companies. To carry out the scheme, the Commission alleged that Shaber and his associate installed nominee officers and directors in dormant companies and caused the dormant companies to file false registration statements with the Commission and NASD, Inc. The Commission's complaint further alleged that Shaber concealed his beneficial ownership and control of the public shell companies in filings with the Commission and realized substantial benefits from the sale of his undisclosed beneficial interest in the entities.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent Shaber's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that Shaber is suspended from appearing or practicing before the Commission as an attorney for five years. Furthermore, before appearing and resuming practice before the Commission, Respondent must submit an affidavit to the Commission's Office of the General Counsel truthfully stating, under penalty of perjury, that he has complied with this Order, that he is not the subject of any suspension or disbarment as an attorney by a court of the United States or of any state, territory, district, commonwealth, or possession, and that he has not been convicted of a felony or misdemeanor involving moral turpitude as set forth in Rule 102(e)(2) of the Commission's Rules of Practice.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION

This file is maintained pursuant to the Freedom of Information Act (5 U.S.C. 552). It contains a copy of each decision, order, rule or similar action of the Commission, for April 2008, with respect to which the final votes of individual Members of the Commission are required to be made available for public inspection pursuant to the provisions of that Act.

Unless otherwise noted, each of the following individual Members of the Commission voted affirmatively upon each action of the Commission shown in the file:

CHRISTOPHER COX, CHAIRMAN

PAUL S. ATKINS, COMMISSIONER

KATHLEEN L. CASEY, COMMISSIONER

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

March 12, 2008

IN THE MATTER OF BEVERAGE CREATIONS, INC. File No. 500-1	CORRECTED ORDER OF SUSPENSION OF TRADING

It appears to the Securities and Exchange Commission that the market for the securities of Beverage Creations, Inc. ("BCI"), quoted on the Pink Sheets under the ticker symbol BVRG, may be reacting to manipulative forces or deceptive practices and that there is a lack of current and accurate information about BCI upon which an informed investment decision can be made. For example, it appears that BCI distributed a press release falsely disclaiming its affiliation with a company that has been touting BCI's stock through a widely distributed promotional mailer. In addition to the promotional mailer, several stock promotion websites have featured BCI's stock, including one that has touted the stock through numerous email alerts.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EDT, March 12, 2008 through 11:59 p.m. EDT, on March 26, 2008.

By the Commission.

Nancy M. Morris
Secretary

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Securities and Exchange Act of 1934
Release No. 57605 / April 2, 2008

Administrative Proceeding
File No. 3-11282

In the Matter of **The CHICAGO STOCK EXCHANGE,** **Respondent.**	:	**ORDER AMENDING ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS, A CENSURE, AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTIONS 19(h) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AS TO THE CHICAGO STOCK EXCHANGE**

I.

On September 30, 2003, the Securities and Exchange Commission (" Commission") instituted public administrative and cease-and-desist proceedings pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934 (" Exchange Act") against the Chicago Stock Exchange (" CHX" or " Respondent").

II.

In anticipation of these proceedings, CHX consented to the entry of an Order Instituting Public Administrative Proceedings Pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Censure, a Cease-and-Desist Order and Other Relief (the "2003 Order").[1] Among other things, the 2003 Order imposed a censure, required the CHX to cease and desist from further violations of the federal securities laws, and required the CHX to comply with significant undertakings designed to enhance the Exchange's oversight of order handling by its members.

Among the undertakings required by the 2003 Order was the creation by CHX of a Regulatory Oversight Committee, which Committee regularly advises the CHX's Board of Directors about regulatory, compliance and enforcement matters and assists the Board in

[1] See Sec. Exch. Act Rel. No. 48566, Sept. 30, 2003, Admin. Proc. File No. 3-11282.

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programs. The Regulatory Oversight Committee is described at Section IV.C.1.a.-c. of the 2003 Order.

III.

CHX has submitted an Amended Offer of Settlement (the "Offer") proposing a change in the composition of the Regulatory Oversight Committee, which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, CHX consents to the entry of this Order Amending Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions, a Censure, and a Cease-and-Desist Order Pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934 as to the Chicago Stock Exchange ("Order"), as set forth below.

IV.

The Commission deems it appropriate in the public interest and for the protection of investors to impose the sanctions agreed to in CHX's Offer.

Accordingly, pursuant to Sections 19(h) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Section IV.C.1.a.-c. of the 2003 Order is amended as follows to order:

CHX shall comply with the following undertakings:

1. <u>Create a Regulatory Oversight Committee</u>

a. Within thirty (30) days of the entry of the 2003 Order, CHX was required to create and shall maintain a Regulatory Oversight Committee to regularly advise CHX's Board of Directors about regulatory, compliance and enforcement matters. The Regulatory Oversight Committee shall consist of at least five Public Directors. Up to two Participant Directors may be appointed to serve as non-voting advisors to the Regulatory Oversight Committee. The Chairman of the Board, if he is not also serving as the Chief Executive Officer, shall be one of the Public Directors on the Regulatory Oversight Committee. The Regulatory Oversight Committee and any advisors shall be appointed by CHX's Vice Chairman (or by the CHX's Chairman, if no Vice Chairman exists) and approved by the Public Directors on the Exchange's Board of Directors. The Regulatory Oversight Committee shall select its chairperson from among the Public Directors on the Regulatory Oversight Committee.

b. The function of the Regulatory Oversight Committee is to assist the Board in monitoring the design, implementation and effectiveness of CHX's programs to promote and enforce compliance with the federal securities laws and CHX and SEC rules including, but not limited to, the order handling rules, which include the firm quote rule, prohibitions against trading ahead and the limit order display rule. To fulfill its responsibilities, the Regulatory Oversight Committee has the duty and authority to:

i. Periodically review reports that shall be prepared by the Market Regulation Department and Listing Departments regarding their activities with respect to (a) compliance examinations, (b) participant surveillance and investigations, (c) participant disciplinary proceedings, (d) issuer listing and delisting proceedings, and (e) new participant qualifications.

ii. Review any reports received by CHX from regulatory entities or third parties with respect to CHX's self-regulatory responsibilities (and any CHX responses thereto), as well as any other reports prepared by or at the direction of CHX in regard to its regulatory or enforcement programs.

iii. Consider any other matters bearing on the effectiveness and efficiency of CHX's surveillance, financial compliance, listings and enforcement programs.

iv. Make recommendations to the Board of Directors with respect to (a) staffing and other resources for regulatory programs; (b) disciplinary, listing and participant qualification rules and procedures; (c) disciplinary sanctioning guidelines; and (d) other matters bearing on the effectiveness and efficiency of CHX's surveillance, financial compliance, listings and enforcement programs.

v. Assess CHX's performance in its design and implementation of its surveillance, financial compliance, listings and enforcement programs.

vi. Directly retain outside counsel and/or other expert external resources to assist the Regulatory Oversight Committee in performing its oversight responsibilities.

vii. Hold regular meetings to engage in the activities described above, as well as any special meetings called by the Regulatory Oversight Committee chairman.

viii. Meet, on at least a quarterly basis, with appropriate Market Regulation Department staff participants to discuss surveillance and enforcement issues. These discussions may occur either as part of the Regulatory Oversight Committee's regular meetings or in special meetings. Prior to each of these quarterly discussions, CHX shall provide the Regulatory Oversight Committee with information relating to the Department's trading surveillance preliminary findings, investigations and related disciplinary proceedings in a form as directed by the Regulatory Oversight Committee to allow it to monitor the effectiveness of the Department's enforcement program, including whether the department's enforcement staff is making appropriate decisions when exercising their prosecutorial discretion.

ix. Review the Regulatory Oversight Committee's activities and findings with the Board of Directors on a semi-annual basis. In addition to the items identified above, the Regulatory Oversight Committee shall advise the Board of Directors regarding the appropriateness of CHX's budget for surveillance and enforcement matters as well the number and expertise of CHX personnel.

c. In carrying out its responsibilities, the Regulatory Oversight Committee shall have full access to CHX employees, under such conditions as the Regulatory Oversight Committee deems appropriate, and shall have the right to request the preparation of reports by CHX staff. The Regulatory Oversight Committee shall also hear from any CHX employee, participant, participant's employee or participant applicant that requests such an opportunity under such conditions as the Regulatory Oversight Committee deems appropriate.

B. With the exception of Section IV.C.1.a.-c. set forth above, all other findings, remedial sanctions and undertakings in the 2003 Order remains in full effect.

By the Commission.

Nancy M. Morris

Nancy M. Morris
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
April 2, 2008

In the Matter of **The Alternative Energy Technology Center, Inc.** **File No. 500-1**	**ORDER OF SUSPENSION OF TRADING**

It appears to the Securities and Exchange Commission that the public interest and the protection of investors require a suspension of trading in the securities of The Alternative Energy Technology Center, Inc. Questions have arisen concerning the company's reliance on Rule 504 of Regulation D of the Securities Act of 1933 in conducting a distribution of its securities, and the accuracy and adequacy of statements in the company's press releases regarding its rights to certain technology. The Alternative Energy Technology Center, Inc., a company that has made no public filings with the Commission, is quoted on the Pink Sheets under the ticker symbol AETE, and has recently been the subject of spam e-mail touting the company's shares.

The Commission is of the opinion that the public interest and the protection of the investors require a suspension of trading in securities of the above-listed company.

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Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EDT, April 2, 2008, through 11:59 p.m. EDT, on April 15, 2008.

By the Commission.

Nancy M. Morris
Secretary

F2:P

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 57612 / April 3, 2008

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2806 / April 3, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-11457

In the Matter of John Luczycki, CPA	ORDER GRANTING APPLICATION FOR REINSTATEMENT TO APPEAR AND PRACTICE BEFORE THE COMMISSION AS AN ACCOUNTANT RESPONSIBLE FOR THE PREPARATION OR REVIEW OF FINANCIAL STATEMENTS REQUIRED TO BE FILED WITH THE COMMISSION

On April 14, 2004, John Luczycki ("Luczycki") was denied the privilege of appearing or practicing as an accountant before the Commission as a result of settled public administrative proceedings instituted by the Commission against Luczycki pursuant to Rule 102(e) of the Commission's Rules of Practice.[1] Luczycki consented to the entry of the order without admitting or denying the findings therein. This order is issued in response to Luczycki's application for reinstatement to appear and practice before the Commission as an accountant responsible for the preparation or review of financial statements required to be filed with the Commission.

During the period from December 2000 to July 2002, Luczycki served as Vivendi Universal, S.A.'s ("Vivendi") Chief Accounting Officer and controller. The Commission's order found that, in this capacity, Luczycki, along with other Vivendi senior executives, made improper adjustments that allowed Vivendi to meet earnings targets that it had communicated to the market. In addition, Luczycki knew or was reckless in not knowing that Vivendi improperly failed to disclose a side agreement that Vivendi entered into in February 2001. Finally, Luczycki participated in Vivendi's failure to disclose in a timely manner all of the material facts about Vivendi's investment in a fund in June, 2001.

In his capacity as a preparer or reviewer, or as a person responsible for the preparation or review, of financial statements of a public company to be filed with the Commission, Luczycki attests that he will undertake to have his work reviewed by the independent audit committee of

[1] *See* Accounting and Auditing Enforcement Release No. 1989 dated April 14, 2004. Luczycki was permitted, pursuant to the order, to apply for reinstatement after three years upon making certain showings.

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any company for which he works, or in some other manner acceptable to the Commission, while practicing before the Commission in this capacity. Luczycki is not, at this time, seeking to appear or practice before the Commission as an independent accountant. If he should wish to resume appearing and practicing before the Commission as an independent accountant, he will be required to submit an application to the Commission showing that he has complied and will comply with the terms of the original suspension order in this regard. Therefore, Luczycki's denial of the privilege of appearing or practicing before the Commission as an independent accountant continues in effect until the Commission determines that a sufficient showing has been made in this regard in accordance with the terms of the original suspension order.

Rule 102(e)(5) of the Commission's Rules of Practice governs applications for reinstatement, and provides that the Commission may reinstate the privilege to appear and practice before the Commission "for good cause shown."[2] This "good cause" determination is necessarily highly fact specific.

On the basis of information supplied, representations made, and undertakings agreed to by Luczycki, it appears that he has complied with the terms of the April 14, 2004 order denying him the privilege of appearing or practicing before the Commission as an accountant, that no information has come to the attention of the Commission relating to his character, integrity, professional conduct or qualifications to practice before the Commission that would be a basis for adverse action against him pursuant to Rule 102(e) of the Commission's Rules of Practice, and that Luczycki, by undertaking to have his work reviewed by the independent audit committee of any company for which he works, or in some other manner acceptable to the Commission, in his practice before the Commission as a preparer or reviewer of financial statements required to be filed with the Commission, has shown good cause for reinstatement. Therefore, it is accordingly,

ORDERED pursuant to Rule 102(e)(5)(i) of the Commission's Rules of Practice that John Luczycki, CPA is hereby reinstated to appear and practice before the Commission as an accountant responsible for the preparation or review of financial statements required to be filed with the Commission.

By the Commission.

Nancy M. Morris
Secretary

J. Lynn Taylor

By: J. Lynn Taylor
Assistant Secretary

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[2] Rule 102(e)(5)(i) provides:

"An application for reinstatement of a person permanently suspended or disqualified under paragraph (e)(1) or (e)(3) of this section may be made at any time, and the applicant may, in the Commission's discretion, be afforded a hearing; however, the suspension or disqualification shall continue unless and until the applicant has been reinstated by the Commission for good cause shown." 17 C.F.R. § 201.102(e)(5)(i).

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 239

[RELEASE NO. 33-8909; FILE NO. S7-30-07]

RIN 3235-AK02

REVISIONS TO FORM S-11 TO PERMIT HISTORICAL INCORPORATION BY REFERENCE

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting amendments to Form S-11, a registration statement used by real estate entities to register offerings under the Securities Act of 1933. The amendments permit an entity that has filed an annual report for its most recently completed fiscal year and that is current in its reporting obligations under the Securities Exchange Act of 1934 to incorporate by reference into Form S-11 information from its previously filed Exchange Act reports and documents. The amendments are identical to amendments to Form S-1 and Form F-1 previously adopted by the Commission and effective as of December 1, 2005.

EFFECTIVE DATE: [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Michael McTiernan at (202) 551-3852, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-3010.

SUPPLEMENTARY INFORMATION: We are amending Form S-11[1] under the Securities Act of 1933.[2]

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[1] 17 CFR 239.18.

[2] 15 U.S.C. 77a et seq.

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I. Discussion

A. Background

Form S-11 is the form that real estate entities generally must use to register offerings under the Securities Act.[3] The form is used for the registration of securities issued by real estate investment trusts and securities issued by other issuers whose business is primarily that of acquiring and holding for investment real estate, interests in real estate, or interests in other issuers whose business is primarily that of acquiring and holding real estate or interests in real estate for investment.[4] Prior to these amendments, Form S-11 did not permit an issuer to satisfy the disclosure requirements of the form through incorporation by reference to the reports and other documents that the issuer previously had filed under the Securities Exchange Act of 1934.[5]

On June 29, 2005, we adopted amendments to Form S-1[6] and Form F-1[7] to permit companies filing those forms to incorporate by reference information from their previously filed Exchange Act reports and documents.[8] The purpose of the amendments was to integrate further the Exchange Act and the Securities Act.[9] The ability to incorporate by reference is conditioned, among other things, on the company having filed its annual report for the most recent fiscal year, being current in its reporting obligations under the Exchange Act, and making the incorporated Exchange Act reports and documents available and accessible on a Web site maintained by or for

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3 Real estate entities may also use Form S-3 [17 CFR 239.13] and Form S-4 [17 CFR 239.25] if they meet the applicable eligibility requirements of those forms. When no other form is available, these entities are required to file on Form S-11 rather than Form S-1.

4 See General Instruction A of Form S-11.

5 15 U.S.C. 78a et seq.

6 17 CFR 239.11.

7 17 CFR 239.31.

8 See Securities Offering Reform, Release No. 33-8591 (Jul. 19, 2005) [70 FR 44722].

9 Id. at 237.

the registrant.[10] Blank check companies, shell companies and penny stock registrants are not permitted to use incorporation by reference. Successor registrants may incorporate by reference if their predecessors were eligible.[11]

In 2005, we did not adopt similar amendments to Form S-11. However, we believe that Form S-11 should be consistent with Form S-1 with respect to incorporation by reference. Both Form S-11 and Form S-1 are long-form registration statements intended for new and unseasoned issuers. The only substantive difference between the two forms is that Form S-11 contains certain additional disclosure requirements specific to real estate entities. We believe that integrating disclosure under the Exchange Act and Securities Act should extend equally to the disclosure obligations of real estate entities.

On December 10, 2007, we proposed amendments to Form S-11 to permit a reporting issuer that has filed an annual report for its most recently completed fiscal year and that is current in its reporting obligations under the Exchange Act to incorporate by reference into its Form S-11 information from its previously filed Exchange Act reports and documents.[12] We received six comment letters in response to the proposed amendments.[13] We are adopting amendments to Form S-11 substantially as proposed with certain modifications to reflect comments received.

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[10] See General Instruction VII of Form S-1 and General Instruction VI of Form F-1.

[11] Id.

[12] Revisions to Form S-11 to Permit Historical Incorporation by Reference, Release No. 33-8871 (Dec. 14, 2007) [72 FR 72274] (the "Proposing Release").

[13] All comment letters are publicly available at http://www.sec.gov/comments/s7-30-07/s73007.shtml or at our Public Reference Room at 100 F Street, NE, Washington, DC 20549.

B. Amendments to Form S-11

1. Historical Incorporation by Reference

(a) Eligibility

We are amending Form S-11 to permit a reporting issuer that has filed an annual report for its most recently completed fiscal year and that is current in its reporting obligations under the Exchange Act to incorporate by reference into its Form S-11 information from previously filed Exchange Act reports and documents. A successor registrant will be able to incorporate information by reference on the same terms if its predecessor was eligible to do so.[14] Consistent with Form S-1 and the provisions outlined in the Proposing Release, the following issuers will not be able to incorporate by reference into a Form S-11:

- reporting issuers who are not current in their Exchange Act reports;[15]
- issuers who are or were, or any of whose predecessors were during the past three years:
    - blank check issuers;
    - shell companies (other than business combination related shell companies); or
    - issuers for offerings of penny stock.[16]

In addition, to enhance the availability to investors of incorporated information, the ability to incorporate by reference is conditioned on the issuer making its incorporated Exchange Act reports and other materials readily accessible on a Web site maintained by or for the issuer.

[14] The succession would have to be either primarily for the purpose of changing the state or jurisdiction of incorporation of the issuer or forming a holding company and the assets and liabilities of the successor would have to be substantially the same as the predecessor at the time of the succession, or all of the predecessor issuers would have to be eligible at the time of the succession and the issuer must continue to be eligible.

[15] As with Forms S-1, F-1 and S-3, to be current, at the time of filing the registration statement, the issuer must have filed all materials required to be filed pursuant to Exchange Act Section 13, 14 or 15(d) [15 U.S.C. 78m, 78n, or 78o(d)] during the preceding 12 calendar months (or for such shorter period that the issuer was required to file such materials).

[16] See Securities Act Rule 419(a)(2) [17 CFR 230.419(a)(2)], Exchange Act Rule 3a51-1 [17 CFR 240.3a51-1] and Securities Act Rule 405 [17 CFR 230.405] for definitions of "blank check company," "penny stock" and "shell company," respectively.

By conditioning the ability to incorporate by reference on the ready accessibility of an issuer's incorporated Exchange Act reports and other materials on its Web site, we are providing investors the ability to obtain the information from those reports and materials at the same time that they would have been able to obtain the information if it was set forth directly in the registration statement. Issuers may satisfy this condition by including hyperlinks directly to the reports or other materials filed on EDGAR or on another third-party Web site where the reports or other materials are made available in the appropriate timeframe and access to the reports or other materials is free of charge to the user.

(b) Procedural Requirements

Under the amendments we are adopting today, the prospectus in the registration statement at effectiveness must identify all previously filed Exchange Act reports and materials, such as proxy and information statements, that are incorporated by reference. There will be no permitted incorporation by reference of Exchange Act reports and materials filed after the registration statement is effective – known as "forward incorporation by reference."[17] Under the amendments, an issuer eligible to incorporate by reference its Exchange Act reports and other materials into its Form S-11 must include the following in the prospectus that is part of the registration statement:

- a list of the incorporated reports and materials;
- a statement that it will provide copies of any incorporated reports or materials on request;
- an indication that the reports and materials are available through the Securities and Exchange Commission's EDGAR system or public reference room;

[17] As discussed below, incorporation by reference of historical Exchange Act reports and documents will be permitted in post-effective amendments to the registration statement, provided the issuer otherwise satisfies the eligibility and procedural requirements set forth in Form S-11.

- identification of the issuer's Web site address where such incorporated reports and other materials can be accessed; and
- required disclosures regarding material changes in, or updates to, the information that is incorporated by reference from an Exchange Act report or other material required to be filed.

2. Form S-11 and Rule 415 under the Securities Act

We have historically permitted registrants offering securities on a continuous basis pursuant to Rule 415[18] under the Securities Act to use Form S-11. However, unlike the cover page of Form S-1, the cover page of Form S-11 does not require a registrant to reflect whether it is relying on Rule 415 under the Securities Act. In response to the suggestion of a commenter, as described below, we have amended the cover page of Form S-11 to conform to the cover page of Form S-1 so as to require a registrant to reflect whether it has relied on Rule 415 under the Securities Act.[19] This amendment also will assist the staff in assessing compliance with the requirements for incorporation by reference, particularly as they apply in the continuous offering context.

C. Comments on Form S-11 Amendments

Commenters strongly supported the proposed amendments to allow issuers to incorporate by reference historical Exchange Act filings into Form S-11.[20] One commenter suggested that Form S-11 should also permit forward incorporation by reference for filings made after

[18] 17 CFR 230.415.

[19] See letter from Bimini Capital Management, Inc. ("Bimini").

[20] See, for example, letters from Bimini, The Investment Program Association ("IPA"), Corporate Property Associates 17 - Global Incorporated ("CPA"), Hines Real Estate Investment Trust, Inc. ("Hines") and Grubb & Ellis Company ("Grubb").

effectiveness of a registration statement.[21] We are not adopting this suggestion. The purpose of these amendments is to revise Form S-11 to conform to Form S-1 and Form F-1 with respect to incorporation by reference and those forms do not permit forward incorporation by reference.

Another commenter suggested that we revise the eligibility requirement that the registrant must have filed an annual report required under Section 13(a) or 15(d) of the Exchange Act for its most recently completed fiscal year.[22] Again, since Form S-1 and Form F-1 include this eligibility requirement, we have not adopted the commenter's suggestion to provide an alternative requirement in Form S-11. We do not believe that this eligibility requirement will prevent the use of incorporation by reference in the multi-year continuous offerings commonly registered on Form S-11 by non-traded real estate investment trusts ("REITs"). These registrants regularly file post-effective amendments to reflect property acquisitions. A post-effective amendment to a Form S-11 may be filed after the end of a registrant's fiscal year but prior to the filing of its Form 10-K, raising the question of whether the registrant may continue to incorporate by reference historical Exchange Act reports in such post-effective amendment. In the continuous offering context, we believe that eligibility to incorporate by reference should be measured immediately prior to the time of filing a Form S-11 registration statement, as specified in Instruction H of the form, and thereafter, each time that a post-effective amendment is filed for purposes of updating the information contained in the prospectus pursuant to Section 10(a)(3) of the Securities Act.[23] Thus a post-effective amendment filed for purposes other than a Section

[21] See letter from Bimini.

[22] See letter from IPA.

[23] 15 U.S.C. 77j(a). Section 10(a)(3) of the Securities Act requires that when a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein shall be as of a date not more than sixteen months prior to such use, so far as such information is known to the user of such prospectus or can be furnished by such user without unreasonable effort or expense.

10(a)(3) update, such as a post-effective amendment to reflect property acquisitions, could continue to incorporate by reference historical Exchange Act reports to the extent the previous post-effective amendment filed for purposes of Section 10(a)(3) or, if not applicable, the original registration statement, was eligible to do so.

Two commenters requested guidance on whether a prospectus supplement may be used to update the information incorporated by reference into the prospectus included in a Form S-11 registration statement.[24] Rule 411[25] under the Securities Act prohibits incorporation by reference of information into a prospectus except as specifically permitted in the registration statement form. If the registrant meets the requirements set forth in Instruction H of Form S-11, as we are adopting Instruction H in this release, then the registrant may elect to incorporate by reference "into the prospectus contained in the registration statement" the information in the documents set forth in Item 29 of Form S-11, as we are adopting Item 29 in this release. For purposes of these form instructions, a revised or supplemented prospectus is "contained in the registration statement" when it is part of a post-effective amendment to the registration statement. This is consistent with our earlier statement that there will be no permitted incorporation by reference of Exchange Act reports and documents filed after the effective date of the registration statement.

Two commenters[26] requested guidance on whether a new non-traded REIT[27] would be a shell company and thus ineligible to incorporate by reference for at least three years. The determination of whether a particular registrant is a shell company depends on the facts and

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[24] See letters from IPA and Hines.

[25] 17 CFR 230.411.

[26] See letters from IPA and Grubb.

[27] Typically a non-traded REIT has only cash assets at the time of effectiveness of its initial Form S-11 registration statement. The initial public offering generally is a best-efforts continuous offering and the proceeds of the offering are used to purchase real estate or real estate related assets that are not identified in the registration statement at the time of effectiveness.

circumstances of that company as considered against the definition of the term "shell company" in Rule 405 and the principles underlying that definition as described in the release adopting that definition.[28] Under appropriate circumstances a non-traded REIT may not be deemed a shell company; however, the determination of whether certain registrants such as non-traded REITs are shell companies is outside the scope of these amendments. Furthermore, in adopting the definition of "shell company" in 2005, we declined to provide more specific or quantitative measurements, as we believed the definition in Rule 405 reflected the traditional understanding of the term "shell company" in the area of corporate finance.[29]

One commenter[30] suggested that we amend the disclosure requirements of Form S-11 to conform to the recent amendments to Regulation S-K[31] with respect to the disclosure requirements of smaller reporting companies.[32] Form S-11 includes some substantive disclosure requirements that are not contained in Regulation S-K.[33] Thus the recent amendments to Regulation S-K made in connection with the elimination of the small business registration forms do not impact these Form S-11 disclosure requirements. Since the purpose of these amendments

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[28] Use of Form S-8, Form 8-K, and Form 20-F by Shell Companies, Release No. 33-8587 (Jul. 15, 2005) [70 FR 42234] (adopting 17 CFR 230.405 and other rules). The shell company rules adopted in that release were intended to protect investors by deterring fraud and abuse through the use of reporting shell companies, including through "pump-and-dump" schemes and schemes to avoid Securities Act registration and prospectus delivery requirements.

[29] See id. The term "shell company" means a registrant, other than an asset-backed issuer as defined in Item 1101(b) of Regulation AB, that has:

-No or nominal operations; and
-Either:
  -no or nominal assets;
  -assets consisting solely of cash and cash equivalents; or
  -assets consisting of any amount of cash and cash equivalents and nominal other assets.

[30] See letter from Bimini.

[31] 17 CFR 229.10 to 17 CFR 229.915.

[32] See Smaller Reporting Company Regulatory Relief and Simplification, Release No. 33-8876 (Dec. 19, 2007) [73 FR 934]. The final rules were effective as of February 4, 2008.

[33] For example, Items 11-15 of Form S-11 include specific disclosure requirements regarding general information about the registrant, its investment policies and its properties that are not contained in Regulation S-K.

is only to revise Form S-11 to conform to Form S-1 and Form F-1 with respect to incorporation by reference, we have not adopted the suggestion at this time. We may consider future amendments to Form S-11 to address any differences between Form S-11 disclosures and Regulation S-K disclosures.

One commenter[34] suggested that we amend an undertaking in Industry Guide 5[35] related to disclosures made in connection with property acquisitions. Since the purpose of these amendments is only to revise Form S-11 to conform to Form S-1 and Form F-1 with respect to incorporation by reference, we have not adopted the suggestion at this time. We may consider future revisions to Industry Guide 5.

Finally, one commenter[36] requested we amend the cover page of Form S-11 to conform to Form S-1 and require a registrant to reflect its reliance on Rule 415 under the Securities Act. Registrants required to register offerings on Form S-11 are permitted to rely on Rule 415 to the extent permitted by the terms of the rule to the same extent as registrants registering on Form S-1. Accordingly, we have adopted the suggestion to revise the cover page of Form S-11 to require a registrant to reflect its reliance on Rule 415 under the Securities Act.

D. Effective Date

The amendments to Form S-11 shall take effect upon publication in the Federal Register. The Commission finds good cause to make the amendments effective prior to 30 days after publication to enable calendar fiscal year registrants eligible to incorporate by reference to satisfy their obligations to update the financial information contained in current prospectuses as required by Section 10(a)(3) of the Securities Act by incorporating their most recently filed Form

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[34] See letter from Grubb.

[35] 17 CFR 229.801.

[36] See letter from Bimini.

10-K. Calendar fiscal year registrants are required to satisfy these updating requirements by April 30, 2008. These registrants would need to make any incorporated reports or materials readily accessible on their Web site; investors, therefore, should be able to obtain the information from those reports or materials at the same time that they would have been able to obtain the information if it was set forth directly in the registration statement. In addition, because the amendments to Form S-11 relieve restrictions on companies to include information already on file with the Commission, we believe that it is appropriate that the effective date of the release upon publication in the Federal Register.

II. Paperwork Reduction Act

A. Background

The amendments to Form S-11 contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[37] As discussed in the Proposing Release, we submitted a request for approval of these to the Office of Management and Budget in accordance with the Paperwork Reduction Act.[38] The title for this information is "Form S-11" (OMB Control No. 3235-0067).

Form S-11 was adopted pursuant to the Securities Act. This form sets forth the disclosure requirements for registration statements prepared by real estate entities to provide investors with the information they need to make informed investment decisions in registered offerings.

Our amendments to Form S-11 are intended to allow issuers that are required to use Form S-11 to incorporate by reference previously filed Exchange Act reports and documents. The

[37] 44 U.S.C. 3501 et seq.

[38] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

amendments revise Form S-11 to conform to Form S-1 and Form F-1 with respect to incorporation by reference.

The hours and costs associated with preparing disclosure, filing forms, and retaining records constitute reporting and cost burdens imposed by the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid control number. The information collection requirements related to registration statements on Form S-11 are mandatory. There is no mandatory retention period for the information disclosed, and the information disclosed will be made publicly available on the EDGAR filing system.

B. Summary of Information Collection

The amendments will decrease existing disclosure requirements for eligible issuers by eliminating the need to repeat information in a Form S-11 when that information was previously disclosed in Exchange Act filings. Any reporting issuer that has filed an annual report for its most recently completed fiscal year and that is current in its reporting obligation will be permitted to incorporate information by reference into its registration statement on Form S-11.

C. Summary of Comments and Revisions to Amendments

Four of the commenters indicated that the amendments will increase the efficiency of the registration process and decrease costs borne by registrants.[39] None of the commenters specifically addressed our request for comment on the Paperwork Reduction Act analysis contained in the Proposing Release. We are nevertheless revising our Paperwork Reduction Act estimates in light of certain rounding adjustments made in our submission to OMB.

[39] See letters from IPA, CPA, Hines and Grubb.

D. Revised Paperwork Reduction Act Burden Estimates

As discussed in Section II.C. above, we are revising the Paperwork Reduction Act burden estimates in the Proposing Release to reflect the rounding of those calculations, as reflected in the submission made to OMB.

For purposes of the Paperwork Reduction Act, we now expect the annual decrease in the paperwork burden for issuers eligible to incorporate by reference to comply with Form S-11 to be approximately 37,950 hours of in-house company personnel time and approximately $45,540,000 for the services of outside professionals.[40] These estimates include the time and the cost of preparing and reviewing disclosure, filing documents, and retaining records. These estimates were based on the following assumptions:

- Each year, approximately 100 registration statements on Form S-11, including post-effective amendments, will incorporate information by reference.[41]
- The estimated paperwork burden for a Form S-11 that does not incorporate information by reference is 1,977 hours, which consists of 494.25 internal hours and 1,482.75 professional hours.[42]

40 Consistent with recent rulemakings and based on discussions with several private law firms, we estimate that the cost of outside professionals retained by the issuer is an average of $400 per hour.

41 This estimate is based on prior filing history and future estimates. From September 1, 2006 to August 31, 2007 issuers that will be eligible to incorporate by reference under these amendments filed approximately 14 new registration statements on Form S-11 and 68 post-effective amendments to registration statements on Form S-11 (excluding post-effective amendments filed for the purpose of deregistering shares). A majority of these filings were made by non-traded REITs. With the elimination of small business registration forms, we estimate that the number of registration statements filed on Form S-11 will increase by 15. See Release No. 33-8876.

42 Consistent with current OMB estimates, we assume that 25% of the total burden is borne by internal staff and 75% by professionals.

- The estimated paperwork burden for a Form S-11 that incorporates information by reference will be the same as the burden currently imposed by Form S-3,[43] which is 459 hours, which consists of 114.75 internal hours and 344.25 professional hours.

- The amount of time eliminated for each Form S-11 that incorporates information by reference will be 1,518 hours per form (1,977 hours for a Form S-11 that does not incorporate information by reference minus 459 hours for a Form S-11 that incorporates information by reference).

- We estimate that the annual decrease in compliance burden after adoption of the amendments will be 151,800 hours (100 registration statements multiplied by 1,518 hours per form).[44] This would include 37,950 hours of issuer personnel time (100 registration statements times 379.5[45] hours of issuer personnel time per registration statement) and 113,850 hours of professional time (100 registration statements times 1,138.5[46] hours of professional time per registration statement).

- The annual cost savings will be approximately $45,540,000 for the services of outside professionals.

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[43] 17 CFR 239.13.

[44] Generally companies eligible to incorporate by reference on Form S-11 will have previously filed at least one Form S-11. The estimated decrease in the compliance burden discussed in this section reflects the reduced costs of preparing a subsequent Form S-11 as well as the reduced costs from utilizing incorporation by reference.

[45] Reflects the difference between the amount of internal time required to prepare a Form S-11 without incorporation by reference (494.25 hours) and the amount of internal time required to prepare a Form S-11 with incorporation by reference (114.75 hours).

[46] Reflects the difference between the amount of professional time required to prepare a Form S-11 without incorporation by reference (1,483 hours) and the amount of professional time required to prepare a Form S-11 with incorporation by reference (344.25 hours).

III. Cost-Benefit Analysis

A. Summary of Amendments

We are adopting revisions to Form S-11 that will allow real estate entities to take advantage of incorporation by reference for their previously filed Exchange Act reports and documents. Form S-1 and Form F-1, which are similar long-form registration statements, currently permit this type of incorporation by reference. The amendments revise Form S-11 to permit incorporation by reference on the same terms as currently provided in Form S-1 and Form F-1. The purpose of the amendments is to integrate further the disclosure obligations of the Exchange Act and the Securities Act for real estate entities.

B. Benefits

We anticipate that the amendments will enable real estate entities to access the capital markets at a lower cost. The amendments will enable eligible issuers to use their Exchange Act filings to satisfy a portion of their Form S-11 disclosure requirements without having to incur costs to replicate information that they already have disclosed in previously filed Exchange Act reports and other documents. For purposes of our Paperwork Reduction Act analysis, we estimate that our amendments to Form S-11 will reduce the annual paperwork burden by approximately 37,950 hours for issuer personnel time at a cost of approximately $6,641,250[47] and by a cost of approximately $45,540,000 for the services of outside professionals. In addition, we believe that the reduction in the size of the prospectus as a result of incorporation by reference will also result in some cost savings and efficiencies in printing and delivering prospectuses.

[47] Consistent with recent rulemaking releases, we estimate the value of work performed by the company internally at a cost of $175 per hour.

The amendments are intended to result in regulatory simplification and efficiency by permitting incorporation by reference on Form S-11 and conforming the requirements of Form S-11 to the requirements of Form S-1 and Form F-1 in that respect. Incorporation by reference will allow eligible issuers to avoid duplicating disclosure in Form S-11 when the information has already been disclosed in Exchange Act reports. In addition, the revisions will simplify the disclosure regime for long-form registration statements by permitting incorporation by reference equally, regardless of industry. Although four of the commenters indicated that the amendments will increase the efficiency of the registration process and decrease costs borne by registrants,[48] none of the commenters specifically addressed our request for comment on the Cost-Benefits Analysis contained in the Proposing Release.

Two commenters requested guidance on whether a prospectus supplement may be used to update the information incorporated in a prospectus included in a Form S-11 registration statement.[49] As discussed above, we believe it is appropriate to limit the use of incorporation by reference to revised or supplemented prospectuses included in post-effective amendments to the registration statement. We believe this limitation is consistent with our prior statements that forward incorporation by reference is not appropriate for long-form registration statements, such as Form S-11, while still reducing the overall filing burden associated with the form.

C. Costs

We expect that the amendments will result in some ongoing costs to issuers that elect to use incorporation by reference. These potential costs relate to the issuer's obligation to make the incorporated Exchange Act reports and documents available on its Web site and include creating and/or maintaining a Web site as well as actually posting the required filings on the Web site.

[48] See letters from IPA, CPA, Hines and Grubb.

[49] See letters from IPA and Hines.

However, we believe that a substantial majority of issuers eligible to use incorporation by reference already maintain Web sites and thus will not have to incur any additional costs to establish a new Web site for this purpose. In addition, we believe that many issuers eligible to use incorporation by reference already post their Exchange Act reports on their Web sites. Those that do not will incur incremental costs to post the required filings. Given that the amendments will not mandate use of incorporation by reference, issuers that are unwilling to bear the cost of complying with the Web site requirement can simply elect not to incorporate information by reference.

We also recognize that permitting incorporation by reference may impose an analytical burden on investors. For example, for offerings on Form S-11 today, much of the relevant information regarding an offering and the issuer is required to be contained in the registration statement. As a result of our amendments, offerings pursuant to Form S-11 could require an investor to assemble and assimilate information from various Exchange Act reports and the registration statement in order to compile all of the relevant information regarding an offering. Investors will have to compile the information integrated into the registration statement or delivered by means outside of the prospectus. We note, however, that Securities Act Forms S-3 and F-3 have long permitted incorporation by reference from the issuer's Exchange Act reports, as have Form S-1 and Form F-1 since December 2005, and we know of no indications that investors are unduly burdened when investing in offerings registered on these forms.

IV. Consideration of Promotion on Efficiency, Competition and Capital Formation

Section 2(b) of the Securities Act,[50] requires us, when engaged in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public

[50] 15 U.S.C. 77b(b).

interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. In response to our request for comment in the Proposing Release on the impact of the proposed amendments on efficiency, competition and capital formation, four of the commenters indicated that the amendments will increase the efficiency of the registration process and decrease costs borne by registrants.[51]

The amendments will amend Form S-11 to permit incorporation by reference on terms equivalent to that currently provided in Form S-1 and Form F-1. We believe the amendments will provide benefits, as discussed in further detail above, by reducing the costs of complying with the Form S-11 disclosure requirements by enabling eligible issuers to incorporate their Exchange Act filings. Eased filing burdens resulting from the amendments will promote efficiency in capital formation for real estate entities and may provide a competitive benefit to entities filing on Form S-11 by allowing them to incorporate their periodic reports by reference to the same extent as registrants filing on Form S-1 and Form F-1.

V. Final Regulatory Flexibility Act Analysis

This Final Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to amendments to Form S-11.

A. Reasons for and Objectives of the Amendments

In 2005, the Commission adopted revisions to Form S-1 and Form F-1 to permit incorporation by reference from previously filed Exchange Act reports and other documents. Currently, real estate entities are not permitted to use Form S-1 to register offerings under the Securities Act. Consequently, these entities are unable to take advantage of the important benefit of incorporation by reference that is enjoyed by companies in all other industries that file registration statements on Form S-1. The ability to use a prospectus that does not need to include

[51] See letters from IPA, CPA, Hines and Grubb.

information provided in previous Exchange Act filings permits companies to streamline the preparation of registration statements and raise capital more efficiently. Companies that are not permitted to incorporate by reference have a greater burden in preparing registration statements in connection with their public offerings. We believe there is no reason to distinguish between real estate entities and other industries for purposes of incorporation by reference.

The purpose of the amendments is to further integrate the Exchange Act and Securities Act by amending Form S-11 to permit incorporation by reference of Exchange Act filings on terms equivalent to that currently provided in Form S-1 and Form F-1. The amendments will extend an important benefit to real estate entities.

B. Significant Issues Raised by Public Comment

In the Proposing Release, we requested comment on any aspect of the Initial Regulatory Flexibility Act Analysis, including the number of small entities that would be affected by the proposals, and both the qualitative and quantitative nature of the impact. While several commenters supported the proposal because of the cost savings to real estate entities, they did not provide any specific comments on the Initial Regulatory Flexibility Act Analysis.

C. Small Entities Subject to the Amendments

The Regulatory Flexibility Act defines "small entity" to mean "small business," "small organization," or "small governmental jurisdiction."[52] The Commission's rules define "small business" and "small organization" for purposes of the Regulatory Flexibility Act for each of the types of entities regulated by the Commission.[53] Roughly speaking, a "small business" and "small organization," when used with reference to an issuer other than an investment company,

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[52] 5 U.S.C. 601(6).

[53] Rules 157 under the Securities Act [17 CFR 230.157], 0-10 under the Exchange Act [17 CFR 240.0-10] and 0-10 under the Investment Company Act [17 CFR 270.0-10] contain the applicable definitions.

means an issuer with total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 1,100 issuers, other than investment companies, that may be considered reporting small entities.[54] The amendments will apply to all issuers required to file registration statements on Form S-11.

As previously noted, in the 12 months ended August 31, 2007, 82 registration statements on Form S-11 were filed, including new registration statements and post-effective amendments. We estimate that four of those were filed by small entities. We also estimate that approximately 15 registration statements were filed on Form SB-2 in the last fiscal year covering transactions by real estate entities that in the future will be required to register on Form S-11.[55] Thus, we estimate that 19 registration statements by small entities will be subject to the amendments.

D. Reporting, Recordkeeping and Other Compliance Requirements

The amendments are expected to impact all capital raising and selling security holder transactions that are registered under the Securities Act on Form S-11. Small entities required to register on Form S-11 will be able to take advantage of the ability to incorporate by reference previously filed Exchange Act reports and documents. We expect that permitting the incorporation by reference of previously filed Exchange Act reports and documents will reduce the aggregate costs incurred by small entities of preparing registration statements on Form S-11 by $9,914,438.[56]

We expect that small entities eligible to register on Form S-11 may need to incur some insignificant additional costs related to complying with the Web site requirements related to

[54] The estimated number of reporting small entities is based on 2007 data, including the Commission's EDGAR database and Thomson Financial's Worldscope database.

[55] See Release No. 33-8876.

[56] This estimate is based on our estimate that 19 registration statements by small entities will be subject to the amendments.

incorporation by reference, although issuers could avoid such costs by electing not to incorporate information by reference. They may also have already incurred this cost for other business reasons.

E. Agency Action to Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the amendments, the Regulatory Flexibility Act requires us to consider the following alternatives:

1. establishing different compliance or reporting requirements that take into account the resources of small entities;
2. the clarification, consolidation, or simplification of disclosure for small entities;
3. use of performance standards rather than design standards; and
4. exempting smaller entities from coverage of the disclosure requirements or any part thereof.

Our amendments will extend the benefit of incorporation by reference to small entities that are required to file registration statements on Form S-11. Establishing a different standard for small business entities would impose a greater compliance burden on small entities and would be inconsistent with the benefits provided for small entities that register on Form S-1 and Form F-1.

VI. Statutory Authority and Text of the Amendments

The amendments described in this release are adopted under the authority set forth in Sections 6, 7, 8, 10 and 19(a) of the Securities Act, as amended.

List of Subjects

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission amends title 17, chapter II, of the Code of Federal Regulations as follows:

PART 239 – FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll, 77mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

2. Amend Form S-11 (referenced in §239.18) as follows:

a. Add General Instruction H;

b. Add to the cover page, above the check box related to "Rule 462(b) under the Securities Act," a check box requiring the registrant to indicate whether it is relying on Rule 415 under the Securities Act;

c. In Part I, add Item 28A;

d. Redesignate Item 29 as Item 29A; and

e. Add new Item 29.

The additions read as follows:

Note -The text of Form S-11 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM S-11

FOR REGISTRATION UNDER THE SECURITIES ACT OF 1933 OF SECURITIES OF

CERTAIN REAL ESTATE COMPANIES

GENERAL INSTRUCTIONS

* * * * *

H. Eligibility to Use Incorporation by Reference

If a registrant meets the following requirements immediately prior to the time of filing a registration statement on this Form, it may elect to provide information required by Items 3 through 28 of this Form in accordance with Item 28A and Item 29 of this Form:

1. The registrant is subject to the requirement to file reports pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934.

2. The registrant has filed all reports and other materials required to be filed by Section 13(a), 14, or 15(d) of the Exchange Act during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials).

3. The registrant has filed an annual report required under Section 13(a) or Section 15(d) of the Exchange Act for its most recently completed fiscal year.

4. The registrant is not:

(a) And during the past three years neither the registrant nor any of its predecessors was:

(i) A blank check company as defined in Rule 419(a)(2) (§230.419(a)(2) of this chapter);

(ii) A shell company, other than a business combination related shell company, each as defined in Rule 405 (§230.405 of this chapter); or

(iii) A registrant for an offering of penny stock as defined in Rule 3a51-1 of the Exchange Act (§240.3a51-1 of this chapter).

(b) Registering an offering that effectuates a business combination transaction as defined in Rule 165(f)(1) (§230.165(f)(1) of this chapter).

5. If a registrant is a successor registrant it shall be deemed to have satisfied conditions 1, 2, 3, and 4(b) above if:

(a) Its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or

(b) All predecessors met the conditions at the time of succession and the registrant has continued to do so since the succession.

6. The registrant makes its periodic and current reports filed pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference pursuant to Item 28A or Item 29 of this Form readily available and accessible on a Web site maintained by or for the registrant and containing information about the registrant.

* * * * *

FORM S-11

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If any of the Securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act, check the following box: []

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PART I – INFORMATION REQUIRED IN PROSPECTUS

* * * * *

Item 28A. Material Changes.

If the registrant elects to incorporate information by reference pursuant to General Instruction H, describe any and all material changes in the registrant's affairs which have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest Form 10-K and which have not been described in a Form 10-Q or Form 8-K filed under the Exchange Act.

Item 29. Incorporation of Certain Information by Reference.

If the registrant elects to incorporate information by reference pursuant to General Instruction H:

(a) It must specifically incorporate by reference into the prospectus contained in the registration statement the following documents by means of a statement to that effect in the prospectus listing all such documents:

(1) The registrant's latest annual report on Form 10-K filed pursuant to Section 13(a) or Section 15(d) of the Exchange Act which contains financial statements for the registrant's latest fiscal year for which a Form 10-K was required to have been filed; and

(2) All other reports filed pursuant to Section 13(a) or Section 15(d) of the Exchange Act or proxy or information statements filed pursuant to Section 14 of the Exchange Act since the end of the fiscal year covered by the annual report referred to in paragraph (a)(1) of this Item.

Note to Item 29(a). Attention is directed to Rule 439 (§230.439 of this chapter) regarding consent to use of material incorporated by reference.

(b)(1) The registrant must state:

(i) That it will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the reports or documents that have been incorporated by reference in the prospectus contained in the registration statement but not delivered with the prospectus;

(ii) That it will provide these reports or documents upon written or oral request;

(iii) That it will provide these reports or documents at no cost to the requester;

(iv) The name, address, telephone number, and e-mail address, if any, to which the request for these reports or documents must be made; and

(v) The registrant's Web site address, including the uniform resource locator (URL) where the incorporated reports and other documents may be accessed.

Note to Item 29(b)(1). If the registrant sends any of the information that is incorporated by reference in the prospectus contained in the registration statement to security holders, it also must send any exhibits that are specifically incorporated by reference in that information.

(2) The registrant must:

(i) Identify the reports and other information that it files with the SEC; and

(ii) State that the public may read and copy any materials it files with the SEC at the SEC's Public Reference Room at 100 F Street, NE, Washington, DC 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. If the registrant is an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (http://www.sec.gov).

* * * * * Florence E. Harmon

By the Commission.

Florence E. Harmon
Deputy Secretary

Dated: April 10, 2008

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 57656 / April 11, 2008

Admin. Proc. File No. 3-11852

In the Matter of the Application of

PAZ SECURITIES, INC.
and
JOSEPH MIZRACHI

For Review of Disciplinary Action Taken by

NASD

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF DISCIPLINARY PROCEEDING

Reconsideration of Sanctions Pursuant to Remand

Court of Appeals remanded Commission determination sustaining NASD sanctions for Commission to consider whether certain facts mitigated Applicants' misconduct and whether sanctions served a remedial purpose. Held, sanctions NASD imposed sustained.

APPEARANCES:

David Clarke, Jr., of DLA Piper US LLP, for PAZ Securities, Inc. and Joseph Mizrachi.

Marc Menchel, Carla Carloni, James S. Wrona, and Jennifer C. Brooks, for NASD.

Case remanded: July 20, 2007
Last brief received: December 19, 2007

Document 6 of 37

I.

This proceeding is here on remand from the United States Court of Appeals for the District of Columbia Circuit. On October 28, 2005, we issued an opinion sustaining NASD's 1/ findings that PAZ Securities, Inc. ("PAZ"), formerly an NASD member firm, and Joseph Mizrachi ("Mizrachi"), PAZ's president and part owner, violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110. 2/ We found the sanctions imposed by NASD -- expelling PAZ from membership and barring Mizrachi from associating with any NASD member firm in any capacity -- neither excessive nor oppressive. The Court of Appeals remanded the proceeding for the Commission to consider whether certain facts mitigated Applicants' violations and justified lesser sanctions and to consider whether the sanctions served a remedial purpose. 3/

II.

Neither the factual findings that establish the violations nor the findings of violation themselves are at issue on remand; we summarize those factual findings here merely to provide the necessary background for our discussion of sanctions. The violations, which serve as the basis for sanctions, stemmed from Applicants' failure to respond to NASD information requests.

A. On May 6, 2003, in connection with its routine examination of PAZ, NASD staff sent a request for information by overnight courier to Mizrachi at PAZ's address in NASD's Central Registration Depository ("CRD"). 4/ NASD sought information concerning whether PAZ had

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1/ On July 26, 2007, the Commission approved a proposed rule change NASD filed to amend its Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of its member firm regulatory functions with NYSE Regulation, Inc. See Securities Exchange Act Rel. No. 56148 (July 26, 2007), 91 SEC Docket 522. Because the disciplinary action here was taken before that date, we continue to use the designation NASD.

2/ PAZ Secs., Inc., Exchange Act Rel. No. 52693 (Oct. 28, 2005), 86 SEC Docket 1880. NASD Procedural Rule 8210 requires members and associated persons to provide information requested by NASD as part of an investigation, complaint, examination, or proceeding. NASD Conduct Rule 2110 requires members to adhere to "high standards of commercial honor and just and equitable principles of trade." A violation of NASD Rule 8210 is also a violation of NASD Rule 2110. Perpetual Secs., Inc., Exchange Act Rel. No. 56613 (Oct. 4, 2007), 91 SEC Docket 2489, 2504 n.50.

3/ PAZ Secs., Inc. v. SEC, 494 F.3d 1059 (D.C. Cir. 2007).

4/ NASD Procedural Rule 8210(d) provides that a notice under Rule 8210 shall be deemed received by the member or person to whom it is directed by mailing or otherwise

(continued...)

implemented a continuing education program; what investment banking or securities business the firm had engaged in since February 2001; what specific duties PAZ had assigned to, and what compensation PAZ had paid to, certain individuals during the period 2000-2002; whether PAZ had revised its written supervisory procedures as requested by NASD; and whether PAZ had a written expense sharing agreement with a company operated by Mizrachi's brother, Simon Mizrachi, that shared office space with PAZ. After Applicants did not respond to the request for information, NASD staff spoke with Simon Mizrachi, who was also a Vice President of PAZ Securities, on May 14, 2003. Simon Mizrachi acknowledged that the firm received the request for information, indicated that they would respond, and advised NASD staff that he would inform Applicant Mizrachi of the information request. Applicants did not provide the information or otherwise respond to NASD.

NASD sent a second letter requesting the information to Mizrachi at PAZ's CRD address on May 20, 2003. The letter stated that failing to provide the requested information "may result in disciplinary action." After Applicants did not respond, NASD sent a third letter to Mizrachi at PAZ's CRD address, as well as to Mizrachi at his residential address in CRD, on July 23, 2003. This letter stated that, if Mizrachi failed to provide the requested information, NASD staff would "recommend that NASD file a formal disciplinary complaint naming both the firm and [Mizrachi] and charging both the firm and [Mizrachi] with failure to provide information in violation of NASD Procedural Rule 8210 and Conduct Rule 2110."

After NASD received no response, it filed a complaint alleging that Applicants had failed to respond to a request for information in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. NASD sent a copy of the complaint to both PAZ and Mizrachi at their CRD addresses on August 14, 2003; NASD sent a second copy of the complaint to both Applicants on September 12, 2003. Although Applicants retained counsel in late September 2003, and counsel sought and received an extension of time to respond, Applicants did not answer the complaint.

NASD filed a motion for default on November 18, 2003, and sent a copy of the motion to both PAZ and Mizrachi at their CRD addresses. On December 15, 2003, counsel for NASD spoke with Simon Mizrachi regarding the motion. Simon Mizrachi asked how the firm could get out of "this mess," and NASD counsel said that NASD had filed a motion for default against the firm and Joseph Mizrachi and that they could respond to that motion. NASD counsel informed Simon Mizrachi that the NASD Hearing Officer could issue a default decision against the firm and Joseph Mizrachi if they did not respond. Applicants did not respond to the motion.

On December 31, 2003, the NASD Hearing Officer issued a decision finding that Applicants defaulted by failing to answer the complaint. The decision expelled PAZ from membership and barred Mizrachi from association with any member firm in any capacity.

4/ (...continued)
transmitting the notice to the last known business address of the member or last known residential address of the person as reflected in the CRD.

B. On January 23, 2004, Applicants responded to NASD's information requests. Applicants requested simultaneously that the Hearing Officer vacate the default decision, but the Hearing Officer denied Applicants' motion on February 18, 2004. On February 10, 2005, after Applicants appealed to NASD's National Adjudicatory Council ("NAC"), the NAC sustained the default and affirmed the sanctions imposed by the Hearing Officer.

Applicants appealed to the Commission. On October 28, 2005, we issued a decision sustaining NASD's findings of violations and the sanctions imposed. Applicants appealed to the Court of Appeals, and the Court of Appeals remanded the matter to the Commission.

The Court of Appeals remanded "for the Commission to consider anew whether the sanctions are excessive or oppressive in light of the factors raised in mitigation and to consider for the first time whether the sanctions serve a remedial purpose." According to the Court, the Commission failed to address Applicants' arguments to the Commission that they deserved less severe sanctions because their "failure to respond to the NASD (1) was of no potential monetary benefit to them and (2) did not result in any injury to the investing public, and that (3) the information requested did not relate to injurious conduct or conduct of potential monetary benefit to them." The Court of Appeals also held that the Commission "did not adequately explain why the sanctions the NASD imposed upon the petitioners were not punitive rather than remedial."

III.

As the Court of Appeals recognized, Exchange Act Section 19(e)(2) requires us to review a disciplinary sanction imposed by the NASD upon a member firm or associated person "to determine whether the sanction 'imposes any burden on competition not necessary or appropriate' to further the purposes of the Act, or is 'excessive or oppressive.'" Applicants do not claim, and the record does not show, that NASD's action imposed an unnecessary or inappropriate burden on competition. For the reasons discussed below, we find that the expulsion of PAZ and bar of Mizrachi are neither excessive nor oppressive on the facts of this case.

A. We begin our analysis with a consideration of NASD's Sanction Guidelines. Although the Commission is not bound by the guidelines, we use them as a benchmark in conducting our review under Exchange Act Section 19(e)(2). 5/ NASD Sanction Guidelines with respect to NASD Rule 8210 provide that, absent mitigating circumstances, a bar should be the standard sanction when an individual fails to respond in any manner, and that expulsion of a firm likewise is warranted for a complete failure to respond in the absence of mitigating factors (an "egregious case"). Out of approximately eighty sanction guidelines, the guideline for violations of Rule 8210 is one of only three that propose a bar as the standard sanction in the absence of

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5/ Perpetual Secs., 91 SEC Docket at 2506 n.56. NASD promulgated the Sanction Guidelines in an effort to achieve greater consistency, uniformity, and fairness in sanctions. Id. (citing NASD Sanction Guidelines 1 (2006 ed.)).

mitigation. 6/ The imposition of a bar as the standard sanction for a complete failure to respond to NASD information requests "reflects the judgment that, in the absence of mitigating factors, a complete failure to cooperate with NASD requests for information or testimony is so fundamentally incompatible with NASD's self-regulatory function that the risk to the markets and investors posed by such misconduct is properly remedied by a bar." 7/ We agree with that judgment for the following reasons.

A complete failure to respond to a request for information issued pursuant to Rule 8210 renders the violator presumptively unfit for employment in the securities industry because the self-regulatory system of securities regulation cannot function without compliance with Rule 8210 requests. "Because of limited Commission resources, Congress has given NASD and other securities industry self-regulatory organizations significant front-line responsibility in ensuring that broker-dealers and their associated persons are complying with applicable statutes, rules, regulations, and ethical obligations." 8/ Exchange Act Section 15A requires that a registered securities association such as NASD enforce compliance by its members and persons associated with its members with the Exchange Act, the rules thereunder, and the rules of the registered securities association. 9/ Each of the rules of the registered securities association, here NASD, must meet certain statutory purposes. The main ones are that an SRO rule be designed for the

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6/ Charles C. Fawcett, IV, Exchange Act Rel. No. 56770 (Nov. 8, 2007), 91 SEC Docket 3147, 3157 n.27. The other two are the sanction guidelines applicable to the conversion of customer funds and to cheating during broker-dealer qualification examinations. Id. A bar may be imposed for many other violations, such as intentional or reckless misrepresentations or omissions of material fact, where NASD deems the particular misconduct at issue to be egregious. See, e.g., NASD Sanction Guidelines at 93.

7/ Fawcett, 91 SEC Docket at 3157.

8/ Id.

9/ 15 U.S.C. 78*o*-3; see also Report of Investigation Pursuant to Section 21(A), Exchange Act Rel. No. 51163 (Feb. 9, 2005), 84 SEC Docket 3129, 3130 ("As a registered association, the NASD has a statutory obligation to comply with the Exchange Act, and to enforce compliance by its members with the Exchange Act and its own rules."). Exchange Act Section 19(h)(1) authorizes the Commission to suspend or revoke the registration of a self-regulatory organization if the Commission finds that such self-regulatory organization has failed to enforce compliance with the provisions of the Exchange Act, the rules thereunder, or the rules of the self-regulatory organization. 15 U.S.C. § 78s(h)(1).

protection of investors. 10/ Thus, each NASD rule governing a broker-dealer has as a principal objective the protection of investors, and a violation of an NASD rule threatens investor harm.

NASD, however, lacks subpoena power; it must therefore "rely upon Procedural Rule 8210 in connection with its obligation to police the activities of its members and associated persons." 11/ Rule 8210 "provides a means, in the absence of subpoena power, for the NASD to obtain from its members information necessary to conduct investigations." 12/ NASD's lack of subpoena power thus renders compliance with Rule 8210 essential to enable NASD to execute its self-regulatory functions. 13/

In responding to Rule 8210 requests, therefore, "[d]elay and neglect on the part of members and their associated persons undermine the ability of the NASD to conduct investigations and thereby protect the public interest." 14/ The failure to respond to NASD information requests frustrates NASD's ability to detect misconduct, and such inability in turn threatens investors and markets. To ensure the continued strength of the self-regulatory system, members and their associated persons who fail to respond in any manner to Rule 8210 requests should be barred (or expelled) unless there are mitigating factors sufficient to rebut the presumption that such violators present too great a risk to the markets and investors to be permitted to remain in the securities industry. 15/ Because we conclude that removing those who present such a risk is necessary to further "'the Exchange Act's basic purpose of protecting public

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10/ 15 U.S.C. § 78*o*-3(b)(6) (stating that an association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that its rules are designed to, among other things, protect investors and the public interest).

11/ Joseph Patrick Hannan, 53 S.E.C. 854, 858-59 (1998).

12/ Richard J. Rouse, 51 S.E.C. 581, 584 (1993).

13/ Elliot M. Hershberg, Exchange Act Rel. No. 53145 (Jan. 19, 2006), 87 SEC Docket 494, 498, aff'd, 210 Fed. Appx. 125 (2d Cir. 2006).

14/ Barry C. Wilson, 52 S.E.C. 1070, 1075 (1996).

15/ See Fawcett, 91 SEC Docket at 3156-58; see also McCarthy v. SEC, 406 F.3d 179, 188 (2d Cir. 2005) ("Our foremost consideration must therefore be whether [the] sanction protects the trading public from further harm.").

investors,'" 16/ a bar (or expulsion) in such circumstances -- a complete failure to respond and no mitigation -- has a remedial, and not a punitive, purpose.

In addition to protecting investors by barring individuals and firms who have already demonstrated a refusal to be investigated, failures to cooperate should be prevented, as NASD notes in its brief, "by the very real threat of a bar and expulsion." The possibility of receiving a bar for a failure to cooperate may have a very specific deterrent effect on all current and future SRO members and associated persons. NASD members and associated persons who know of wrongdoing and are approached by NASD with requests for information as part of an investigation should be deprived of any incentive to fail to cooperate. The sanction for any misconduct an NASD investigation uncovers could be less than a bar, and wrongdoers should know that cooperation is their best chance of avoiding the bar that they will almost certainly receive for non-cooperation (in the absence of mitigating factors). The general deterrence effects of a bar and the threat of a bar are substantial.

B. On remand, Applicants argue that the sanctions imposed by NASD in this case are punitive and excessive because Applicants did not fail completely to respond to NASD's information requests and because certain allegedly mitigating factors warrant lesser sanctions. For the reasons discussed below, we reject both arguments.

1. There is no merit to Applicants' contention that, instead of failing completely to respond to the Rule 8210 requests at issue, they were simply "slow to respond to a request for information." NASD sent Applicants three separate requests for information which Applicants did not answer with any reasonable promptness. NASD staff spoke twice with Simon Mizrachi, Applicant Mizrachi's brother and a Vice President of PAZ Securities, regarding the requests for information; Applicants did not provide the requested information in response to either conversation. Applicants also did not provide the information in response to NASD's two notices of complaint, nor did they provide the information in response to NASD's motion for default. Applicants answered only after NASD expelled PAZ from membership and barred Mizrachi from association with a member eight-and-a-half months after the original request. The failure to respond until after NASD barred Applicants is not merely a "slow" response; such a failure is tantamount to a complete failure to respond. "NASD should not have to bring disciplinary proceedings, as it was required to do here, in order to obtain compliance with its rules governing its investigations." 17/

16/ Dennis A. Pearson, Jr., Exchange Act Rel. No. 54913 (Dec. 11, 2006), 89 SEC Docket 1627, 1640 (quoting Gershon Tannenbaum, 50 S.E.C. 1138, 1141 (1992)); see also Jay Alan Ochanpaugh, Exchange Act Rel. No. 54363 (Aug. 25, 2006), 89 SEC Docket 2653, 2661 ("Rule 8210 is an essential cornerstone of NASD's ability to police the securities markets and should be rigorously enforced.").

17/ Toni Valentino, Exchange Act Rel. No. 49255 (Feb. 13, 2004), 82 SEC Docket 711, 719.

2. The Court of Appeals remanded for the Commission to address whether Applicants' misconduct was mitigated based on Applicants' arguments that (1) their misconduct was of no potential monetary benefit to them; (2) their misconduct did not result in any injury to the investing public; and (3) the information requested did not relate to injurious conduct or conduct of potential monetary benefit to them. We find that neither these factors nor the additional factors Applicants urge as mitigation demonstrate that the sanctions imposed by NASD are excessive on the facts of this case.

Applicants' failures to respond to NASD's information requests are not mitigated because those failures did not, in themselves, produce a monetary benefit to Applicants or result in injury to the investing public. As NASD notes, a violation of Rule 8210 will almost never result in direct financial gain to the violator. Similarly, a Rule 8210 violation will rarely, in itself, result in direct harm to a customer. Rather, failing to respond undermines NASD's ability to detect misconduct that may have occurred and that may have resulted in harm to investors or financial gain to respondents. Thus, even if the failure to respond does not result in direct improper financial benefit to respondents or harm to investors, it is serious because it impedes detection of such violative conduct. 18/

Applicants' contention that the information requested here did not relate to injurious conduct or conduct of potential monetary benefit to themselves is mistaken. NASD issued the requests for information to investigate whether Applicants had violated NASD rules -- with the potential for consequent harm to customers or monetary benefit to the violators -- such as unreported securities business and improper expense sharing. 19/

The failure to report transactions shields trades from regulatory oversight. This oversight is critical to regulators' ability to uncover potentially harmful, and unjustly enriching, conduct such as abusive sales practices, insider trading, and trading ahead. Because the firm had not reported any trading activity for a considerable period prior to the requests, NASD asked

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18/ Cf. Ronald H.V. Justiss, 52 S.E.C. 746, 750 (1996) (sustaining bar imposed by NASD for possessing unauthorized materials during a qualification examination where although "the misconduct did not involve direct harm to customers, it flouts the ethical standards to which members of this [the securities] industry must adhere").

19/ Applicants highlight NASD's failure to bring any enforcement proceeding based on misconduct uncovered from their eventual responses, arguing that this failure establishes the inconsequentiality of the information requested. Applicants read too much into NASD's inaction. As noted in the text, it is the possibility that a request for information may ascertain whether misconduct has occurred that makes the request important. Moreover, the record gives no indication whether Applicants' responses did not, in fact, produce evidence of misconduct. By the time Applicants submitted their responses, they had already been barred and expelled, rendering moot the necessity of any further enforcement that may have been warranted by the information in Applicants' responses.

Applicants for information concerning, among other topics, "the investment banking and/or securities business the firm ha[d] engaged in since February 2001" to determine whether PAZ had engaged in unreported securities business. NASD could not identify whether such misconduct occurred, however, because Applicants did not respond to its inquiries.

The inquiries about improper expense sharing are significant because, where it occurs,

> the books and records of the broker/dealer may not accurately reflect its operating performance and financial condition and may appear to artificially inflate its profitability and, ultimately, cause it to appear to be in capital compliance when it is not. Further, such firms may continue to conduct a securities business when not in capital compliance, which is a violation of the SEC's Net Capital Rule, as well as a violation of NASD Rule 2110. In addition, as the party paying the expenses of the broker/dealer is usually not a member of an SRO, obtaining books and records related to the broker/dealer's operations can be problematic. 20/

Ensuring compliance with the net capital rule is important to protect investors from the possible financial collapse of a firm. 21/ In asking about unreported securities business and improper expense sharing, therefore, NASD's inquiries concerned potentially injurious conduct or conduct of potential monetary benefit to Applicants. NASD was prevented from determining whether Applicants engaged in such potentially harmful conduct, however, because Applicants did not answer its information requests.

We emphasize that the importance of the information requested must be viewed from NASD's perspective at the time it seeks the information. NASD notes in its brief that its investigations often "commence before investigatory staff has a clear picture of the nature and breadth of the misconduct." In this case, Applicants prevented NASD from gaining a clear picture of the nature and breadth of any misconduct by failing to respond to its information requests. NASD's requests concerned potentially serious violations. As NASD also notes in its brief, "[m]itigation cannot be based on a respondent's second guessing the importance of the investigation because, in cases such as this, it is the respondent who has *prevented* [NASD] from

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20/ NASD Notice to Members 03-63, available at http://www.finra.org.

21/ See Blaise D'Antonai & Assocs. v. SEC, 289 F.2d 276, 277 (5th Cir. 1961) ("The net capital rule is one of the most important weapons in the Commission's arsenal to protect investors. By limiting the ratio of a broker's indebtedness to his capital, the rule operates to assure confidence and safety to the investing public.").

completing the investigation and assessing any misconduct and its gravity (emphasis in original)." 22/

Applicants state that "in every case [they] have been able to locate where the NASD has imposed a lifetime bar for failing to respond to a request for information, the NASD had issued the request for information as part of an investigation into possible securities violations or other serious misconduct involving harm to a customer." Applicants fail to recognize that a request for information is no less serious because NASD issues the request in an effort to prevent or uncover misconduct rather than to unearth the details of misconduct of which it is already aware.

Applicants contend that, in other cases, "the primary reason given for the imposition of a lifetime bar was the fact that respondent's failure to respond undermined the NASD's 'efforts to investigate possible *fraudulent* activity,'" 23/ and that, here, the information NASD requested of them was "mundane," "issued in connection with a 'routine examination' that had nothing to do with any customer or even any securities transaction." These contentions misperceive the purpose of NASD investigations. As we have explained, the information NASD requested concerned potentially serious rule violations with potentially harmful consequences. We also wish to emphasize that NASD information requests that do not concern potentially injurious conduct or conduct of potential monetary benefit to respondents are nonetheless important. In this case, NASD requested, in addition to information regarding unreported securities business and improper expense sharing, information concerning PAZ's continuing education program and PAZ's written supervisory procedures. NASD adopted its continuing education program "to help ensure that registered persons stay current on products, markets, and rules to the ultimate benefit

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22/ See also Morton Bruce Erenstein, Exchange Act Rel. No. 56768 (Nov. 8. 2007), 91 SEC Docket 3114, 3120 (stating that a "member or associated person may not 'second guess[]' an NASD information request or 'set conditions on their compliance" and that a "belief that NASD does not need the requested information 'provides no excuse for a failure to provide it'") (alteration in original) (citations omitted).

23/ Applicants cite Dep't of Enforcement v. Valentino, 2003 NASD Discip. LEXIS 15 (emphasis added), for this proposition. That NASD barred Valentino for impeding its efforts to investigative possible fraud does not prevent NASD from also barring respondents who impede its investigations into other potentially serious misconduct. Applicants "receive[] only limited benefit from comparison to sanctions imposed in other cases due to the highly fact-dependent nature of the propriety of sanctions." McCarthy, 406 F.3d at 188; see also Hiller v. SEC, 429 F.2d 856, 858 (2d Cir. 1970) ("Hiller argues that the imposition of a bar in his case is inconsistent with the lesser penalties ordered by the Commission in other cases involving what Hiller considers to be more serious violations of the securities laws. Comparison of sanctions in other cases is foreclosed, however . . . . [W]e cannot disturb the sanctions ordered in one case because they were different from those imposed in an entirely different proceeding.").

of the investing public." 24/ NASD mandates that firms have written supervisory procedures "to allow . . . personnel at the firm, as well as regulators, to easily determine who is responsible for supervising a particular area." 25/ NASD enacted these requirements to prevent harm to investors by ensuring compliance with its rules. Monitoring compliance with these requirements is equally a part of NASD's enforcement program as is prosecuting violations. Applicants' failure to respond to requests for information about their compliance with these requirements impeded NASD's ability to protect investors. NASD's information requests therefore concerned information essential to NASD's investor protection efforts, and, contrary to Applicants' argument, the nature of the requested information does not mitigate the violations.

Applicants also argue that NASD urges the Commission "to disregard as irrelevant the very mitigating factors that the Court of Appeals has instructed the Commission to consider." The Court of Appeals, however, did not find that certain factors established mitigation but rather instructed the Commission to consider whether factors that it identified constituted mitigation in this case. For the reasons discussed above, those factors do not mitigate Applicants' violations.

Applicants contend that, in addition to the factors the Court of Appeals remanded for the Commission to address, mitigation exists because they have a "clean disciplinary record" and because they did not "mislead anyone or conceal their present misconduct." The Court of Appeals stated, however, that "[i]nsofar as the petitioners claim the Commission should have considered their previously clean disciplinary record and that they did not attempt either to mislead anyone or to conceal their present misconduct, their arguments are forfeit because the petitioners did not raise them before the Commission." Similarly, "[i]t is elementary that where an argument could have been raised on an initial appeal, it is inappropriate to consider that argument on a second appeal following remand." 26/

In any case, we disagree with Applicants that these factors mitigate their violations. "Lack of a disciplinary history is not a mitigating factor. . . . Refraining from giving false responses is not mitigating behavior." 27/ As we have noted previously, "lack of disciplinary

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24/ NASD Notice to Members 95-13, available at http://www.finra.org.

25/ NASD Notice to Members 99-45, available at http://www.finra.org.

26/ Nw. Indiana Tel. Co. v. FCC, 872 F.2d 465, 470 (D.C. Cir. 1989); see also Nicholas T. Avello, Exchange Act Rel. No. 51633 (Apr. 29, 2005), 85 SEC Docket 1299, 1302 (stating that applicant "waived his right to raise any new issues not raised in the initial appeal"), petition denied, 454 F.3d 619, 627 (7th Cir. 2006).

27/ Rooms v. SEC, 444 F.3d 1208, 1214-15 (10th Cir. 2006). Although Applicants note that NASD Sanction Guidelines require adjudicators to consider disciplinary history,

(continued...)

history is not mitigating for the purposes of sanctions because an associated person should not be rewarded for acting in accordance with his duties as a securities professional." 28/ Applicants also should not be rewarded for refraining from obfuscating their misconduct. 29/

Applicants' justification for failing to respond to the information requests further evidences the risk that they will engage in future misconduct. Mizrachi claims that he did not respond to NASD's information requests because he "never received the 8210 request or ensuing Complaint because he was not in the United States when NASD attempted to serve him with the requests." Although Applicants acknowledge that associated persons must maintain a current address in CRD, they contend that they "were not obligated to change the address listed on CRD" because they "had not moved from their CRD addresses, but were only temporarily out of the country." Mizrachi, however, did not arrange to receive NASD correspondences sent to PAZ's CRD address while out of the country temporarily.

Applicants' cavalier disregard of the need to ensure that PAZ and Mizrachi respond to requests for information in a timely fashion even while Mizrachi is out of the country poses a clear risk of future misconduct. Mizrachi states in an affidavit accompanying Applicants' reply brief in support of their motion to vacate the default decision that "much of [his] business requires that [he] travel throughout the world." A high likelihood therefore exists that Mizrachi would be out of the country if NASD sent PAZ a request for information in the future. As we noted in our earlier opinion, if Mizrachi is unavailable to respond to a request for information, he has "an obligation to delegate PAZ's operations, including its compliance with the NASD's request for information, to another PAZ employee and to monitor that employee's performance." Here, however, Mizrachi was out of the country when NASD sent its requests for information in this case, and Mizrachi "did not keep the CRD apprised of a forwarding address, delegate anyone to assume compliance with NASD's requests, or remain apprised of the status of the proceeding." Because Mizrachi thus has demonstrated a disregard for his duty to ensure that he or PAZ respond to requests sent to their CRD addresses while he is out of the country, NASD faces a great risk of being unable to obtain from Applicants information necessary for the protection of investors. The sanctions imposed by NASD appropriately remedy that risk.

27/ (...continued)
Applicants fail to recognize that the Sanction Guidelines consider disciplinary history relevant for imposing sanctions "beyond those outlined in these guidelines." In this case, the Sanction Guidelines recommend a bar as the standard sanction, and a clean disciplinary record does not justify a departure from that recommended sanction.

28/ Philippe N. Keyes, Exchange Act Rel. No. 54723 (Nov. 8, 2006), 89 SEC Docket 792, 801.

29/ John F. Noonan, 52 S.E.C. 262, 265 (1995) (finding no mitigation in Applicant's contention that he "did not take affirmative steps to conceal his misconduct").

Finally, we reject Applicants' contention that the "imposition of a lifetime bar in this case is a punitive sanction" because, in McCarthy v. SEC, 30/ "McCarthy was suspended for two years -- and persuaded the Second Circuit to overturn even that as punitive rather than remedial -- while PAZ and Mr. Mizrachi have been barred for life!" Applicants' characterization of McCarthy is incorrect. The Second Circuit "expressed no opinion on whether [certain] circumstances in fact render[ed] the suspension irretrievably excessive and punitive, and . . . thus decline[d] McCarthy's invitation to reverse the penalty outright." Instead, the Second Circuit remanded for the Commission to "provide a more detailed explanation linking the sanction imposed to those circumstances if it wishe[d] to uphold the sanction." We remanded the case to the NYSE, which had imposed the suspension initially, so that it had "an opportunity to explain further the findings and conclusions that support its chosen sanction." 31/ On remand, McCarthy consented to a censure and $75,000 fine. McCarthy v. SEC, moreover, involved different misconduct and different claims of mitigating circumstances than those at issue in this case. Furthermore, as we have noted previously, the appropriate sanction depends on the facts and circumstances of each particular case and cannot be precisely determined by comparison with the action taken in other proceedings. 32/

Accordingly, we find that the expulsion of PAZ and bar of Mizrachi are neither excessive nor oppressive because, as set forth above, Applicants do not identify any factors that mitigate their severe violations and the sanctions serve a remedial rather than punitive purpose. An appropriate order will issue. 33/

By the Commission (Chairman COX and Commissioners ATKINS and CASEY).

Florence E. Harmon

By: Florence E. Harmon
Deputy Secretary

Nancy M. Morris
Secretary

30/ 406 F.3d 179 (2d Cir. 2005).

31/ Edward John McCarthy, Exchange Act Rel. No. 53138 (Jan. 18, 2006), 87 SEC Docket 478.

32/ Supra note 23; see also Butz v. Glover Livestock Comm'n Co., 411 U.S. 182, 186-87 (1973); Geiger v. SEC, 363 F.3d 481, 488 (D.C. Cir. 2004).

33/ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 57656 / April 11, 2008

Admin. Proc. File No. 3-11852

In the Matter of the Application of

PAZ SECURITIES, INC.
and
JOSEPH MIZRACHI

For Review of Disciplinary Action Taken by

NASD

ORDER SUSTAINING SANCTIONS IMPOSED BY REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the sanctions imposed by NASD against PAZ Securities, Inc. and Joseph Mizrachi be, and they hereby are, sustained.

By the Commission.

Nancy M. Morris
Secretary

Florence E. Harmon

By: Florence E. Harmon
Deputy Secretary

[BILLING CODES 6210-01-P; 8010-01-P]

FEDERAL RESERVE SYSTEM

12 CFR Part 218

[Regulation R; Docket No. R-1274]

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 247

[Release No. 34-56501A; File No. S7-22-06]

RIN 3235-AJ74

DEFINITIONS OF TERMS AND EXEMPTIONS RELATING TO THE "BROKER" EXCEPTIONS FOR BANKS

AGENCIES: Board of Governors of the Federal Reserve System ("Board") and Securities and Exchange Commission ("SEC" or "Commission") (collectively, the Agencies).

ACTION: Final rule; technical amendments.

SUMMARY: The Board and the Commission jointly are adopting technical amendments to Regulation R, which the Agencies jointly adopted in September 2007. Regulation R implements certain of the exceptions for banks from the definition of the term "broker" in Section 3(a)(4) of the Securities Exchange Act of 1934 ("Exchange Act"), as amended by the Gramm-Leach-Bliley Act ("GLBA"). The technical amendments correct cross-references and other typographical errors in the regulation.

DATES: Effective date: The technical amendments are effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Compliance date: As provided in 12 CFR 218.781 and 17 CFR 247.100 of Regulation R, banks are exempt from complying with Regulation R and the "broker" exceptions in

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Section 3(a)(4)(B) of the Exchange Act until the first day of their first fiscal year that commences after September 30, 2008.

FOR FURTHER INFORMATION CONTACT:

BOARD: Andrea Tokheim, Counsel, (202) 452-2300, or Brian Knestout, Attorney, (202) 452-2249, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263-4869.

SEC: Linda Stamp Sundberg, Senior Special Counsel, at (202) 551-5550, Office of the Chief Counsel, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

A. Overview of Technical Amendment

In September 2007, the Board and the SEC jointly adopted a single set of final rules called Regulation R that implement certain of the exceptions for banks from the definition of the term "broker" in Section 3(a)(4) of the Exchange Act, as amended by the GLBA.[1] Regulation R defines terms used in these statutory exceptions and includes certain related exemptions. The Board and the SEC are jointly adopting these technical amendments to correct certain cross-references and typographical errors in the final rules.

In particular, paragraph (b) of Rule 701 is revised to add a colon at the end of the paragraph.[2] Paragraphs (a)(6) and (a)(7) of Rule 721 are redesignated as paragraphs

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1 See 72 FR 56514, Oct. 3, 2007, which added parts 12 CFR 218 and 17 CFR 247 to the Code of Federal Regulations.

2 The final rules adopted by the Board and the SEC within their respective titles of the Code of Federal Regulation (12 CFR part 218 for the Board and 17 CFR part 247 for the SEC) are identically numbered from § ___.100 to § ___.781. For ease

(a)(5) and (a)(6) because there was no numbered paragraph (a)(5). Paragraph (c)(2) of Rule 721 is revised to correctly cross-reference paragraph (h)(2), rather than paragraph (g)(2). Paragraph (e)(3) of Rule 723 is revised to correctly refer to "this paragraph (e)", rather than "this paragraph (d)". For consistency, paragraphs (a)(1)(A) and (a)(1)(B) of Rule 741 are redesignated as paragraphs (a)(1)(i) and (a)(1)(ii). Finally, paragraph (b)(1)(i) of Rule 775 is revised to add a dash to the citation of 15 U.S.C. 80a-5(a)(1).

B. Administrative Procedure Act

The Agencies find, in accordance with Sections 553(b) and (d) of the Administrative Procedure Act,[3] that good cause exists to make these amendments effective upon publication in the Federal Register without providing prior notice and an opportunity for comment. Specifically, the Agencies find that notice and comment and a delayed effective date are unnecessary because the amendments make only technical changes to Regulation R and there is no substantive change on which the public could provide meaningful comment.[4]

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of reference, the single set of final rules adopted by each Agency are referred to in this release as Rule ___, excluding title and part designations. A similar format was used to refer to the single set of rules issued by the Agencies.

3 5 U.S.C. 553(b)(3)(A) and (d)(3).

4 For similar reasons, the amendments do not require analysis under the Regulatory Flexibility Act or analysis of major rule status under the Small Business Regulatory Enforcement Fairness Act. See 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility Act analyses, the term "rule" means any rule for which the agency publishes a general notice of proposed rulemaking); 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term "rule" does not include any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties).

C. Paperwork Reduction Act

Finally, the technical amendments do not contain any new or additional collections of information as defined by the Paperwork Reduction Act of 1995, as amended.[5]

List of Subjects

12 CFR Part 218

Banks, Brokers, Securities.

17 CFR Part 247

Banks, Brokers, Securities.

Federal Reserve System

Authority and Issuance

For the reasons set forth in the preamble, the Board amends 12 CFR part 218 as set forth below:

PART 218— REGULATION R – EXCEPTIONS FOR BANKS FROM THE DEFINITION OF BROKER IN THE SECURITIES EXCHANGE ACT OF 1934 (REGULATION R)

1. The Authority citation for part 218 continues to read as follows:

Authority: 15 U.S.C. 78c(a)(4)(F).

Securities and Exchange Commission

Authority and Issuance

For the reasons set forth in the preamble, the Commission amends 17 CFR part 247 as set forth below:

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5 44 U.S.C. 3501.

PART 247— REGULATION R – EXEMPTIONS AND DEFINITIONS RELATED TO THE EXCEPTIONS FOR BANKS FROM THE DEFINITION OF BROKER

2. The authority citation for part 247 continues to read as follows:

Authority: 15 U.S.C. 78c, 78o, 78q, 78w, and 78mm.

Common Rules

The common rules adopted by the Board as Part 218 of Title 12, Chapter II of the Code of Federal Regulations and by the Commission as Part 247 of Title 17, Chapter II of the Code of Federal Regulations are amended as follows:

3. Paragraph (b) of common rule §__.701 is revised to read as follows:

§ ___.701 Exemption from the definition of "broker" for certain institutional referrals.

*****

(b) Required disclosures. The disclosures provided to the high net worth customer or institutional customer pursuant to paragraphs (a)(2)(i) or (a)(3)(i) of this section shall clearly and conspicuously disclose:

*****

4. In common rule §__.721, paragraphs (a)(6) and (a)(7) are redesignated as paragraphs (a)(5) and (a)(6), respectively, and paragraph (c)(2) is revised to read as follows:

§ ___.721 Defined terms relating to the trust and fiduciary activities exception from the definition of "broker."

*****

(c) ***

(1) ***

(2) Advertisement. For purposes of this section, the term advertisement has the same meaning as in § ___.760(h)(2).

5. Paragraph (e)(3) of common rule §__.723 is revised to read as follows:

§ ___.723 Exemptions for special accounts, transferred accounts, foreign branches and a de minimis number of accounts.

*****

(e) ***

(3) The bank did not rely on this paragraph (e) with respect to such account during the immediately preceding year.

6. In common rule §__.741, paragraphs (a)(1)(A) and (a)(1)(B) are redesignated as paragraphs (a)(1)(i) and (a)(1)(ii), respectively.

7. In common rule §__.775, paragraph (b)(1)(i) is revised to read as follows:

§ ___.775 Exemption from the definition of "broker" for banks effecting certain excepted or exempted transactions in investment company securities.

*****

(b) ***

(1) ***

(i) Any security issued by an open-end company, as defined by section 5(a)(1) of the Investment Company Act (15 U.S.C. 80a-5(a)(1)), that is registered under that Act; and

*****

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, April 11, 2008.

Robert deV. Frierson
Deputy Secretary of the Board

Dated: April 11, 2008 Florence E. Harmon

By the Securities and Exchange Commission
Florence E. Harmon
Deputy Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
April 11, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13005

In the Matter of 21st Century Technologies, Inc., Respondent	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. 21st Century Technologies, Inc. (CIK No. 1090870) ("21st Century") is a dissolved Nevada corporation formerly located in Las Vegas, Nevada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). 21st Century's securities were traded on the Over-the-Counter Bulletin Board until the Commission suspended trading in the stock on February 18, 2005 (ticker symbol: TFCY).

B. DELINQUENT PERIODIC FILINGS

2. Respondent is delinquent in its periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1). It has not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2004. Since then, the company filed a Form 8-K on January 9, 2006, announcing that it would restate its earnings previously reported on Forms 10-K for the year ended December 31, 2003 and three subsequent quarters. Respondent never made those filings; instead, the company filed a petition for protection in Bankruptcy Court.

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3. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports (Forms 10-K or 10-KSB), and Rule 13a-13 requires issuers to file quarterly reports (Forms 10-Q or 10-QSB).

4. As a result of the foregoing, Respondent failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondent an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke, the registration of each class of securities of the Respondent registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondent fails to file the directed Answer, or fails to appear at a hearing after being duly notified, Respondent may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondent personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Nancy M. Morris
Secretary

J Lynn Taylor

By: J. Lynn Taylor
Assistant Secretary

Appendix 1

Chart of Delinquent Filings of
21st Century Technologies, Inc.

Form Type	Period Ended	Due Date	Months Delinquent (rounded up)
10-K	Dec. 31, 2004	Mar. 31, 2005	35
10-Q	Mar. 31, 2005	May 15, 2005	33
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10-K	Dec. 31, 2005	Mar. 31, 2006	24
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CORRECTED

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 57655 / April 11, 2008

Admin. Proc. File No. 3-12573

In the Matter of the Application of

DENNIS TODD LLOYD GORDON
AND
STERLING SCOTT LEE
c/o Joel A. Gordon
Joel A. Gordon & Associates
6666 Harwin Drive, Suite 220
Houston, Texas 77036

For Review of Disciplinary Action Taken by

NASD

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF DISCIPLINARY PROCEEDINGS

Violations of Rules of Fair Practice

Permitting Unregistered Individual to Function as Principal

Failing to Maintain Accuracy of Membership Application

Charging Excessive Markups

Failing to Disclose Markups on Customer Confirmations

Individuals who served, respectively, as (a) chairman, chief executive officer, and principal and (b) president, chief compliance officer, and principal of former NASD member firm (1) permitted an unregistered individual to function as a principal of the firm, (2) failed to maintain the accuracy of the firm's membership application, and (3) charged retail customers excessive markups. President was responsible for firm's failure to disclose those markups on customer confirmations. Held, association's findings of violations and sanctions imposed are sustained in part and set aside in part.

Document 9 of 37

APPEARANCES:

Joel A. Gordon, Esq., of Joel A. Gordon & Associates, for Sterling Scott Lee and Dennis Todd Lloyd Gordon.

Marc Menchel, Alan Lawhead, James Wrona, and Carla J. Carloni, for NASD.

Appeal filed: February 23, 2007
Last brief received: May 30, 2007

I.

Dennis Todd Lloyd Gordon, the chairman, chief executive officer, and a principal of former NASD member firm Lloyd Scott and Valenti, Ltd. ("LSVL" or the "Firm") and Sterling Scott Lee, LSVL's president, chief compliance officer, and also a principal of the Firm (together, "Applicants"), appeal from NASD disciplinary action. 1/ NASD found that, between February 2000 and May 2003, Applicants permitted an unregistered individual to function as a principal of the Firm, in violation of NASD Membership and Registration Rule 1021, 2/ NASD Conduct Rule 2110, 3/ and Article V, Section 1 of NASD's By-Laws, 4/ and that Applicants failed to

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1/ On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Rel. No. 56146 (July 26, 2007), 72 Fed. Reg. 42,190 (Aug. 1, 2007) (SR-NASD-2007-053). Because the disciplinary action here was taken before that date, we continue to use the designation NASD.

2/ NASD Membership and Registration Rule 1021 requires, among other things, that "[a]ll persons engaged . . . in the . . . securities business of a member who are to function as principals shall be registered as such" with NASD. NASD Manual at 3171 (2000).

3/ NASD Conduct Rule 2110 requires NASD members to observe high standards of commercial honor and just and equitable principles of trade. Id. at 4111. NASD Rule 115 provides that persons associated with members shall have the same duties and obligations as members under the rules. Id. at 2111. A violation of NASD's Membership and Registration rules also constitutes a violation of Conduct Rule 2110. E.g., Michael F. Flannigan, 56 S.E.C. 8, 18 (2003).

4/ As relevant here, Article V, Section 1 of NASD's By-Laws prohibits a member from permitting any person associated with the member to engage in the investment banking or

(continued...)

maintain the accuracy of the Firm's membership application, in violation of Article IV, Section 1 of NASD's By-Laws. 5/ NASD found further that Applicants, acting with scienter, caused LSVL to charge fraudulently excessive markups in thirty-one retail sales during a three-month period in 2002, in violation of NASD Rules 2110, 2120, 6/ 2440, 7/ IM-2440, 8/ and Section 10(b) of the Securities Exchange Act of 1934 and Exchange Act Rule 10b-5, 9/ and that Applicants failed to disclose those markups on customer confirmations, in violation of NASD Rule 2230, 10/

4/ (...continued)
securities business without first determining that such person meets eligibility requirements and is not subject to disqualification. NASD Manual at 1310.

5/ Article IV, Section 1 of NASD's By-Laws requires members to ensure that membership applications are kept current by supplemental amendments. Id. at 1308; see also IM-1000-1, id. at 1311 (stating that filing with NASD incomplete or inaccurate information that is misleading or could tend to mislead may be conduct inconsistent with just and equitable principles of trade).

6/ NASD Conduct Rule 2120 prohibits the use of manipulative, deceptive, or other fraudulent devices in connection with any transaction in, or purchase or sale of, any security. Id. at 4141.

7/ NASD Conduct Rule 2440 requires that securities transactions entered into between members and their customers occur at fair prices, taking into account all relevant circumstances. Id. at 4351.

8/ IM-2440 deems it a violation of NASD Conduct Rules 2110 and 2440 "for a member to enter into any transaction with a customer in any security at any price not reasonably related to the current market price of the security." Id. IM-2440 was renumbered IM-2440-1 as of April 16, 2007. Order Granting Approval to Proposed Rule Change Relating to Additional Mark-Up Policy for Transactions in Debt Securities, Except Municipal Securities, Exchange Act Rel. No. 55638 (Apr. 16, 2007), 90 SEC Docket 1367, 1368 n.14.

9/ 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5. Exchange Act Section 10(b) and Rule 10b-5 thereunder generally make it unlawful for any person to use any manipulative or fraudulent device in connection with the purchase or sale of any security.

10/ NASD Conduct Rule 2230 sets forth disclosure and other requirements governing customer confirmations, including the requirement, when an NASD member is "acting as a broker" for a customer, to disclose "the source and amount of any commission or other remuneration received" in connection with the transaction reported in the confirmation. NASD Manual at 4213.

Exchange Act Section 10(b), and Exchange Act Rule 10b-10. 11/ NASD barred Gordon and Lee in all capacities and ordered them, jointly and severally, to pay restitution of $20,832.40 plus interest. 12/ We base our findings on an independent review of the record.

II.

This case involves two distinct types of misconduct. First, NASD found that Applicants allowed a person who had not registered with NASD in any capacity to exercise significant management authority over the Firm, and that Applicants did not report that person's association with LSVL to NASD, as required. Second, NASD found that Applicants, acting with scienter, caused LSVL to charge fraudulently excessive markups that were not disclosed on confirmations sent to customers. We turn first to the misconduct related to the Firm's association with an unregistered person.

A. Misconduct Related to Association with Unregistered Principal

1. Facts

In late 1998 or early 1999, Gordon met Michael Guss, a Russian-trained lawyer who had immigrated to the United States in 1991. 13/ In 1996, Guss pleaded guilty to a felony involving

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11/ 17 C.F.R. § 240.10b-10. Exchange Act Rule 10b-10 requires, in relevant part, that a non-market maker broker-dealer who, acting as a principal for its own account, "after having received an order to buy [an equity security] from a customer, . . . purchased the equity security from another person to offset a contemporaneous sale to such customer or, after having received an order to sell from a customer, . . . sold the security to another customer to offset a contemporaneous purchase from such customer" must disclose in writing to the customer "the difference between the price to the customer and the dealer's contemporaneous purchase (for customer purchases) or sale price (for customer sales)." Rule 10b-10(a)(2)(ii)(A), 17 C.F.R. § 240.10b-10(a)(2)(ii)(A).

12/ NASD also assessed costs. Gordon's request for a stay pending appeal was denied on March 5, 2007.

13/ Guss was known by several names, including Mikhail Soroejine and Mike Kale. We refer to him throughout this opinion as Michael Guss, the name he gave when he testified on the record during the NASD staff's investigation. Guss did not testify before the NASD Hearing Panel.

In a separate NASD disciplinary proceeding, which was settled, LSVL and Guss were censured, fined, and required to pay restitution to injured customers; LSVL was further

(continued...)

money laundering. As a result of that conviction, Guss was, at all times relevant to this matter, disqualified from registration in the securities industry. 14/ Applicants admit that they knew that Guss was not registered with NASD, but deny any knowledge of his disqualification. 15/ They do not dispute, however, that they failed to determine whether Guss was disqualified.

Gordon and Lee became registered with LSVL in approximately February 2000 and May 2000 respectively. LSVL was wholly owned successively by two holding companies. As of February 2000, LSVL was held by Devonshire Forte, Ltd. ("Devonshire"). Gordon and Lee each owned twenty percent of the shares of Devonshire and served on its board of directors. The majority owner of Devonshire, holding sixty percent of its shares, was Elena Sordia, a Russian attorney. Guss testified during the NASD staff's investigation that he held a general power of attorney for Sordia. 16/

In May 2002, Envision Ventures, Inc. ("Envision") acquired LSVL from Devonshire. As with Devonshire, Gordon and Lee each owned twenty percent of the shares of Envision and served on its board of directors. Kathia Santiago, a former fashion model and Guss's wife, was the majority owner of Envision, holding sixty percent of its stock.

13/ (...continued)
required to undertake an ownership change, and Guss was barred in all capacities. In June 2004, LSVL filed a Form BDW to withdraw its broker-dealer registration.

14/ See Article III, Section 4(g)(2) of NASD's By-Laws, NASD Manual at 1307 (stating that person convicted of felony is subject to disqualification from association with NASD member for ten years after date of conviction); Article V, Section 2(b) of NASD's By-Laws, id. at 1311 (stating that NASD shall not approve an application for registration of a person not eligible to be an associated person of a member).

15/ Guss testified, during the NASD staff's investigation, that he informed Gordon and Lee generally about the guilty plea in 2000 or 2001, but Gordon and Lee testified that they did not learn of the plea until approximately October 2003, after the NASD staff's investigation started. Although NASD's hearing panel, which heard Applicants' testimony, found that Applicants either "knew, or should have known," that Guss was statutorily disqualified, NASD's National Adjudicatory Council expressly declined to make that finding, noting that the evidence was inconclusive. Like the NAC, we do not find that Applicants knew of Guss's disqualification.

16/ Although the terms of the power of attorney and the evidence regarding whether Guss held a proxy for Sordia are unclear, our findings are based on what the record shows about the authority Applicants actually allowed Guss to exercise.

LSVL was not a profitable venture for either holding company. The Firm required repeated funding from the holding companies in order to survive. Gordon and Lee anticipated, however, that if LSVL made money, they would receive a share of the profits. 17/

Gordon and Lee described Guss's official role at the Firm as its "webmaster," i.e., limited to maintaining its Internet website and related Internet activities. 18/ Despite his ostensibly limited role, however, Guss directed the Firm's activities. The record establishes that, working nearly full time for the Firm, Guss exercised authority over a broad range of Firm operations, including the recruiting, hiring, and firing of Firm personnel; setting employee sales quotas; and issuing policies regarding employee use of Firm supplies and equipment. Guss was also involved in establishing policies regarding employee accountability and other administrative matters, in addressing a customer complaint about an apparent discrepancy in an account, and in handling the Firm's relations with its clearing firm.

The Firm's business plan involved expansion by opening branch offices and hiring "independent brokers, getting them set up under the [LSVL] umbrella." Guss actively sought to establish LSVL branch offices and recruit individual brokers. 19/ Guss interviewed potential candidates and negotiated relevant agreements. 20/

17/ There was a one-time special distribution from LSVL to one of the holding companies, as a result of which Lee and Gordon each received several thousand dollars.

18/ Applicants testified that Guss was responsible for "setting up all the websites, designing the website, developing the website, hosting the website," and for developing the software and website for NexStox, an Internet trading division of LSVL, seeing that it worked, and conducting an email campaign to advertise NexStox.

19/ All individuals associated with LSVL, whether registered or unregistered, were employed and compensated by the holding company and "assigned" by the holding company to work at LSVL. The record shows that Lee had some responsibilities for hiring and firing these employees. Gordon testified, however, that "[i]f necessary, I'm sure [Guss] would call a board meeting if he wanted to overrule [Lee]," although he also stated that "it didn't happen very often, if at all."

20/ For example, in a February 5, 2003 email to Lee, an LSVL registered representative complained that "when michael hierd [sic] me," he told the registered representative one thing regarding compensation, but now Lee was telling him something different.

For example, Guss arranged for Jeffrey Chicola to establish a New York branch office in June 2000. 21/ Gordon admitted that Guss "was involved in recruiting" for another branch office in New York, "[a]nd if there was a deviation from the [standard employment] agreement, Mr. Guss, may have discussed it with the brokers. He may have asked or even directed Sterling [Lee] or I to accept it."

On July 22, 2002, Guss sent an email to Gordon, with a copy to Lee, saying that he "urgently" needed a template of an agreement "for the crew in Long Island," who had called Guss and said that "they wanted to go ahead with a switch to LSVL. I will need to discuss with you their wish list and some of the adjustments we might need to make to get those kids on board." Lee apparently acquiesced in Guss's handling the matter on behalf of LSVL, replying, "Great news!" and saying that he would have someone email Guss a current copy of the requested agreement. 22/ LSVL eventually opened an additional New York branch office at Guss's recommendation.

In a January 2002 email, Guss instructed Lee to

> get [a new registered representative] registered (with pre-hire dated of 1/15/2002 [sic]). He will come on board in a couple of weeks and will start an [office] here in FL. . . . [W]e will support him in several ways for a test period of time . . . . [W]e will pick up some of his expenses (still in negotiation). Test period is 3 months as he has to show at least $15k worth of production.

In a September 18, 2002 email to Lee, with a copy to Gordon, Guss reported that he was "working on" arrangements for a Florida branch office; on September 22, 2002, he reported that "[t]he negotiations here in FL are in the final stage" and attached a copy of a branch office agreement.

In a February 6, 2003 email to Gordon and Lee, Guss proclaimed, "We might be in serious luck. I might be landing a producer here in FL today. . . . He is also bringing in additional brokers (if it works out)." In December 2002, Guss alerted Gordon and Lee by email that an individual from Chile would be submitting a pre-hire form and asked them to "[p]lease process his hire."

21/ Initially, Guss recruited Chicola to be LSVL's president. However, Chicola was unable to start work at LSVL as soon as Guss wanted him to, and by the time he did start, Lee had already become president of LSVL.

22/ Both Lee and Gordon testified that Guss had no authority to bind the Firm to contracts. However, Lee and Gordon accepted Guss's involvement in contract negotiation because, as Gordon testified, "[h]e represented the largest shareholders . . . of both [Devonshire Forte] and Envision Ventures."

The record also shows that Guss asserted and exercised authority to terminate Firm employees, including registered personnel. In a December 11, 2001 email, Guss instructed Lee and Gordon to "[p]lease fire all the worthless brokers who have not paid renewals by the 21st. Please fire all the rest of the worthless brokers who paid their renewals but still owe the firm money as soon as possible." 23/ In early January 2003, Guss directed Lee to ask an LSVL employee who held several securities licenses "to resign effective immediately" and asked Lee to find a new employee and then to "get rid of" another employee as soon as the new hire was found. 24/ In a January 27, 2003 email, Guss informed Lee that yet another employee "is fired as of today." In February 2003, Guss asked Lee to terminate a licensed employee whom Guss described as "a quitter, whiner and complainer"; several days later, Lee sent the succinct reply, "[D]one."

Lee and Gordon acceded to Guss's authority. In a January 2002 email to an LSVL employee, Lee identified Guss as one of the "powers" who "have the power to tell me to fire people." A former LSVL employee testified that, when Lee terminated her employment with the Firm, he said that "if Michael [Guss] wanted to let me go, there was nothing he could do to help me." Gordon himself admitted in testimony that it was within Guss's power to fire Gordon and Lee, the president and CEO of the Firm: "If he wanted to have a board meeting and have us fired, so be it."

Guss also directed numerous aspects of LSVL's business operations, including working conditions, policies, and employee assignments. In a November 24, 2001 email captioned "Policy Issus" [sic], Guss provided a ten-point list of "new corporate policies and action directives" with which the holding company "expects LSVL to comply." Guss directed that new brokers recruited to work for LSVL submit to a credit check, document at least $24,000 of annual brokerage production for the last fiscal year, and agree that their outstanding debts to the Firm be paid in full by the end of each month starting with the second month of their registration with the Firm. Guss added that "LSVL management should have no right to waive any of the above without prior approval by [Devonshire Forte]." Guss further stated that "all licensed employees" must "be able to operate Q-Charts quote system" and be able to explain "equities' and options' quotes and charts in Q-Charts system" (and that training of any employees who lacked familiarity with that system "must commence immediately") and that employees must "refresh their skills pertaining to opening NexStox.com accounts."

23/ It is not clear what "renewals" Guss is referring to. In another email, Guss discusses the need to make sure registered representatives pay Devonshire their "outstanding dues."

24/ The employee in question testified that she was not a salesperson for LSVL and that her responsibilities were more administrative than sales-oriented. However, a January 3, 2003 email from Guss to Gordon and Lee directing Lee to "ask [the employee] to resign immediately" stated that a new employee to be hired "has to take up all the licensed functions" she performed.

In a later email, dated December 11, 2001, Guss told Lee and Gordon that "[t]he new recruitment policies must be adopted and strictly adhered to" and that "[a]ll the policies submitted in the letter [sic] of 11/24 must be implemented." In the same email, Guss directed Lee and Gordon to assign an employee to "a permanent mission of harassing the brokers who owe the firm money with collection letters"; emphasized the "need to establish rigid accountability of the employees"; and proposed "installing software in the girls' computers allowing management to remotely oversee what they are doing."

Guss also gave orders directly to LSVL personnel. For example, in a May 2002 email, Guss gave an LSVL employee an "urgent mission" to deal with several requests related to reporting trade information and editing reports regarding order routing required by Commission rule. In a July 15, 2002 email, he passed along a customer inquiry regarding an alleged $232 discrepancy in the customer's account, asking an administrative employee at LSVL to "look into it and reply to the customer directly . . . [and] copy me . . . ." 25/ On another occasion, Guss interceded to make sure that a customer's account was set up to allow margin trading before the account was funded.

Guss held himself out to persons outside the Firm as having authority to communicate for and make commitments on behalf of LSVL. In an email regarding a proposed branch office agreement, Guss referred to "[m]y firm, Lloyd, Scott & Valenti, Ltd." On LSVL's behalf, Guss represented: "We will ask you to provide a subordinated loan . . . . We will sign a [branch office] agreement . . . . We will lease . . . all your current hardware. . . . We will weed out all the bad traders and brokers . . . . We can complete all that in 4-6 weeks." Applicants were copied on the email. Guss also identified himself with LSVL in email correspondence with a clearing firm, reminding the firm that "we submitted a proposal of a new clearing agreement to you. . . ." 26/ In an email seeking to attract potential registered representatives to join LSVL, Guss referred to "our own brokers"; Guss signed the email "Michael, repsupport@lsvl.net."

Persons outside LSVL dealt with Guss as someone they expected to be able to act on behalf of LSVL. For example, in a February 2003 email to Gordon, copy to Lee, Guss wrote:

> PCCM [an issuer] have officially requested me to consider putting LSVL on the cover of their SB-2 offering as the lead best-efforts underwriter. . . . We need to fast-track this deal and by the end of next week . . . we must have all the ducks in a row to have the selling agreement fully prepared. Can we pull this off?

25/ The customer apparently had complained that his account balance decreased by $232 from one day to the next despite no intervening account activity.

26/ The email also states, "you wrote to me promising to get back . . . ." Applicants were copied.

Jeffery Chicola, who worked in the original LSVL New York branch office during 2000 and 2001, testified that "all big decisions," "all major decisions," and "all money decisions" were made by Guss while Chicola was at LSVL. Chicola further testified that Guss told him that Gordon and Lee would do whatever Guss told them to do. When there were disagreements, Chicola testified, Chicola would bring in Guss and the matter in question would be handled as Guss directed.

Although at the hearing Applicants asserted that Guss's role at the Firm was limited primarily to technical support, other portions of their testimony and certain internal emails show that they recognized that his role was far more expansive. In a December 11, 2001 email to Lee, Gordon wrote, "As [Sordia's] proxy, we report to Michael [Guss]. He is our boss . . . ." In an October 17, 2002 email addressed to "the staff at the Austin office" of LSVL, Gordon characterized Guss as "one of your superiors." In the same email, Gordon instructed the staff that they should "follow Michael's instructions without fail." 27/

Moreover, Applicants were apparently aware that Guss's active managerial role was in violation of NASD requirements. Two former LSVL staff members testified that Applicants instructed them, before a routine NASD examination in 2001, to avoid referring to Guss other than as the Firm's webmaster and to put documents that had Guss's name on them out of sight. 28/ In a February 11, 2002 letter to Guss and Lee, Gordon expressed concern about

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27/ The email stated that Guss would "not provide you with instructions related to specific securities, securities related issues, or brokerage related instructions." However, this assertion is contradicted by other emails discussed above.

28/ Although Lee denied having given such instructions, the NASD hearing panel, which heard the witnesses testify, credited the staff members' testimony, finding that Applicants "instructed the firm's staff to remove documents bearing MG's name from view" and "directed LSVL staff to refrain from discussing [Guss] with NASD examiners, telling them to say that [Guss] was the firm's webmaster, if asked." Applicants argue that, contrary to the assertion in NASD's brief, the record is devoid of any evidence suggesting that Applicants told "brokers" not to mention Guss to the NASD examiners. Although the witnesses who testified were not part of LSVL's sales force, Applicants' instructions nonetheless suggest that they were attempting to conceal the true nature of Guss's involvement with the Firm from the examiners.

Applicants argue that the record shows they did not attempt to conceal Guss from regulators because "Lee took calls from Guss, which were openly announced to Lee by the receptionists in the presence of NASD examiners," Gordon mentioned Guss in a Pre-Membership Interview, and "over 8000 emails which disclosed the existence of Guss were voluntarily delivered to examiners."

(continued...)

> Michael's increased direct involvement with registered representatives of the b/d . . . . It should be noted that if Michael engages in conversations with parties where it is implied by Michael that he can cause LSVL to do or not do specific business, he might be engaging in investment banking/securities activities of the firm as an unregistered associated person, which is obviously against the rules.

Gordon stated in the letter that Guss's direct involvement with the sales staff was a problem "for both Sterling and myself." In a late February 2002 series of emails between Lee and Guss, on which Gordon was copied, Guss asked why certain stocks were on LSVL's approved product list and who was "pushing" those stocks. Lee responded:

> It is not a need for [Devonshire] to know who is pushing certain stocks. That is an LSVL function. It is a [moot] point anyway. I can only surmise (and probably correctly) that you are talking to the brokers . . . . [Devonshire's] engagement with brokers about investment activity is a violation of our policies. I am not sure how many more times this must be re-iterated before it becomes common practice of [Devonshire]. I think we should just register you as an associated person so we will not have this discussion anymore. Following the rules is of the UTMOST importance.

Lee admitted that Guss had "obviously" been told before the February 2003 emails were sent that he should not discuss investment activity with LSVL registered representatives, and that Guss "didn't get the message the first time, and it took three times or something." 29/ Lee conceded that it was "possible" that Guss had been engaging in activity that would have required a securities license. Lee testified that he had little leverage to "keep [Guss] corralled," but stated that he could not have cut off contact with Guss: "His family had a large investment in the entire parent company and the subsidiary." Gordon similarly admitted, "Honestly, Michael [Guss] has the – the representative of the largest shareholder has a lot of input."

28/ (...continued)
We find that this evidence does not establish that Applicants did not attempt to conceal the nature of Guss's involvement with the Firm. Applicants have not shown that the receptionists' announcements or any mention of Guss in the Pre-Membership Interview disclosed the degree of Guss's involvement with LSVL. As far as the email messages were concerned, NASD's 2003 examination was unannounced, and Applicants cooperated with NASD examiners pursuant to NASD Procedural Rule 8210.

29/ Lee paraphrased his advice to Guss, "Why don't you just get registered? You keep coming up to the line and maybe stepping a foot over. If you want to leap in, you need to get registered."

2. Analysis

a. NASD defines principals as persons associated with a member "who are actively engaged in the management of the member's investment banking or securities business, including supervision, solicitation, conduct of business or the training of persons associated with a member for any of these functions." 30/ NASD has informed its members that "[a] registration determination does not depend on the individual's title, but rather on the functions that he or she performs." 31/

It is clear from the record that Guss, although not holding an official managerial title at the Firm, nonetheless filled a management role at LSVL. Guss devoted a substantial amount of time and attention to LSVL, giving directions and orders to Gordon and Lee about a wide variety of matters related to the conduct of LSVL's business. 32/ Applicants acceded to Guss's authority. They repeatedly referred to Guss as a "boss" or "superior," someone who was "running" the Firm and "making the decisions." Employees were told to "follow [Guss's] instructions without fail." We have previously held that a person who devotes significant time to firm affairs and participates in management decisions is a principal, whether or not the person holds an official firm title. 33/

30/ NASD Membership and Registration Rule 1021(b).

31/ NASD Notice to Members 99-49 (June 1999), 1999 NASD LEXIS 24, at *4; cf. Gordon Kerr, 54 S.E.C. 930, 935 (2000) (basing determination as to whether individual is supervisor on both responsibilities assigned and activities performed). While Rule 1021(b) lists five categories of persons who are required to register as principals, we have previously sustained NASD determinations that persons who do not fall into one of those categories are principals where, as here, the requirement of active engagement in the management of the member's investment banking or securities business is satisfied. See, e.g., Richard F. Kresge, Exchange Act Rel. No. 55988 (June 29, 2007), 90 SEC Docket 3072, 3092-93; Samuel A. Sardinia, 46 S.E.C. 337, 343 (1976).

32/ The record contains more than 200 pages of copies of emails. Numerous other emails not explicitly mentioned in this opinion further support the conclusions reached here.

33/ Sardinia, 46 S.E.C. at 343; see also Kresge, 90 SEC Docket at 3092-93 (finding that individual who held no official firm title, but provided financial support to branch office, played a substantial role in office finances, was actively involved in hiring, participated in meetings, and acted as leader of personnel initially opening office was "actively engaged in the management" of firm's securities business and therefore should have been registered as a principal); Kirk A. Knapp, 51 S.E.C. 115, 129 (1992) (finding that individual continued to function as principal despite relinquishing titles of president and director).

Guss also represented himself outside LSVL as one acting on behalf of the Firm, referring to LSVL as "my" firm and speaking of LSVL's actions in terms of what "we" had done or would do. Third parties with whom he dealt on the Firm's behalf understood Guss to be in a position to act for the Firm, which is additional evidence of his principal status. 34/ Under the circumstances, we believe that Guss was associated with the Firm in a principal capacity without the requisite registration, in violation of NASD rules, and that Applicants actively facilitated that association.

NASD Membership and Registration Rule 1021 requires, among other things, that "[a]ll persons engaged . . . in the . . . securities business of a member who are to function as principals shall be registered as such with NASD . . . ." Applicants contend that Rule 1021 does not require that individuals who "only provide functions to support" a firm's securities and investment banking business register as principals and that "functions not involved in the chain of the securities transaction do not require registration as a principal." They contend that Guss's involvement was limited to LSVL's "general, back-office and other non-securities related business activities" and that registration as a principal was therefore not necessary. Applicants cite no authority in support of the narrow "chain-of-securities transactions" rule they articulate, and we are aware of none.

Moreover, Guss's involvement at LSVL went far beyond the limited functions described by Applicants. As set forth above, Guss was extensively involved in personnel matters at LSVL: from establishing branch offices; hiring and negotiating the terms of registered representatives' employment; and ordering the termination of LSVL employees. He negotiated with clearing firms and gave extensive instructions about LSVL operations and policies. We have previously held that conduct of this nature supports the determination that registration as a principal is required. 35/

Applicants assert that "any person in any member firm can submit a request to make policy," but argue that, if Guss had the ability to make policy, he would have phrased his instructions as orders rather than mere requests. Applicants further contend that Guss was not

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34/ Hans N. Beerbaum, Exchange Act Rel. No. 55731 (May 9, 2007), 90 SEC Docket 1863, 1866-68 (unregistered person held self out as principal and officer of firm); L.H. Alton & Co., 53 S.E.C. 1118, 1125 n.21 (1999) (unregistered person held self out as partner); William J. Blalock, 52 S.E.C. 77, 84 & n.25 (1994) (unregistered person held self out as president of firm), aff'd, 96 F.3d 1457 (11th Cir. 1996) (Table).

35/ See, e.g., Knapp, 51 S.E.C. at 129 (negotiating employment contract, salary, and benefits and firing employee contributed to determination that individual was principal); Kirk A. Knapp, 50 S.E.C. 858, 861 (1992) (hiring of salesperson was factor contributing to conclusion that individual exercised managerial role and was acting as a principal); see also Douglas Conrad Black, 51 S.E.C. 791, 794 (1993) (employee who supervises another employee is a principal).

managing LSVL because the directives he gave were not necessarily followed. We have previously held, however, that the fact that one is consulted about firm affairs may "illustrate[] . . . influence in the management of the firm" whether or not the views articulated prevail. 36/ Moreover, we observe that many of Guss's directives to Applicants, in fact, take the form of orders and have noted above a number of instances where Applicants followed Guss's directives. Both Lee and Gordon acknowledge that they were under a lot of pressure to do what Guss wanted because he was the representative of the majority shareholder of the holding companies that successively owned LSVL and could have them fired if he so chose.

Applicants assert that Guss's powers at LSVL were limited because, they say, the power of attorney that Guss held for Sordia specifically prohibited him from exercising signatory authority. They also assert that Guss never exercised a proxy. We have previously held that an individual who is actively engaged in the management of a firm may be a principal without finding that the individual had signatory authority, or held a proxy, or otherwise exercised voting control over a firm or the holding company for a firm. 37/ The record establishes that Guss had extensive authority over the Firm's activities; that Guss exercised it; and that Applicants viewed Guss as acting on Sordia's, then Santiago's, behalf, with or without signatory authority or proxy.

Applicants argue that no individual act by Guss required registration and that "if each act by Guss independently does not constitute a violation, the mere cumulation of the same acts will not change the outcome." They also refer to "common practice" and assert that various things Guss did for LSVL are commonly handled by outsiders who are not required to register; for example, they claim that recruiting is sometimes handled by recruiting firms.

In determining whether an individual is required to register as a principal we consider all of the relevant facts and circumstances, including the cumulation of individual acts that might not, on their own, show management. As discussed above, Guss undertook responsibility for a wide range of issues related to the conduct of LSVL's business and the tenure and conduct of its employees. 38/ Moreover, even if no individual function required Guss to be registered, the

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36/ Sardinia, 46 S.E.C. at 343; see also Knapp, 51 S.E.C. at 129 (finding that individual who demanded to be included in discussions about issues including hiring and budget decisions, personnel and salary rates, and leasing acted as principal).

37/ E.g., Kresge, 90 SEC Docket at 3092-93; Sardinia, 46 S.E.C. at 343.

38/ See, e.g., Juan Carlos Schidlowski, 48 S.E.C. 507, 510 (1986) (reviewing "very broad responsibility" given to individual across several departments in concluding that principal registration was required).

combination of functions he exercised clearly brought him within NASD's definition of a principal. 39/

Applicants argue that they took affirmative steps to ensure that Guss did not engage in LSVL's securities business. However, the weight of the evidence shows that any such steps were ineffective. Applicants knew that Guss wielded controlling power, and they allowed that to happen.

For the reasons discussed above, we find that Guss functioned as a principal and was not registered. In permitting Guss to associate with the Firm as a principal without determining his eligibility or the existence of any disqualification, Applicants violated Rules 1021 and 2110 and were responsible for the Firm's violation of Article V, Section 1 of NASD's By-Laws.

b. We also find that Applicants were responsible for LSVL's violation of Article IV, Section 1(c) of NASD's By-Laws based on their failure, during the entire period at issue here, to list Guss on the Firm's Form BD. Between February 2000 and May 2003, Applicants made more than twenty Form BD filings on behalf of LSVL. Applicants stipulated at the hearing that Guss's name did not appear on any Form BD submission made by LSVL at any time.

Article IV, Section 1(c) requires that each NASD member "ensure that its membership application with [NASD] is kept current at all times by supplementary amendments." 40/ Firms must file amendments with NASD "not later than 30 days after learning of the facts or circumstances giving rise to the amendment." 41/ Because Guss was actively involved in the management of LSVL, LSVL's Form BD should have reflected that involvement. 42/ Applicants'

39/ Applicants argue that "separate functions are the basic premise for different registrations, [and] . . . [w]ithout compartmentalization there would be no need for different registration qualifications." In some instances different functions may require different registrations, but the question in this proceeding is merely whether Guss was required to register as a principal. Guss was not registered in any capacity; issues about registration in other capacities are not before us.

40/ NASD Manual at 1308.

41/ Id.

42/ Question 9 on Form BD asks, among other things, whether any person not named in other specified sections of the form "control[led] the management or policies of the applicant through agreement or otherwise." "Control" is defined as "[t]he power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise." Based on our findings set forth above, we conclude that Guss controlled the management of LSVL within this definition.

failure to disclose Guss's involvement with LSVL caused LSVL's application to be incomplete, inaccurate, and misleading.

c. i. Guss's investigative testimony and the accompanying exhibits (most of which were emails) were introduced into evidence at the hearing. When asked by the hearing officer whether there was an objection to the introduction of that evidence, counsel for Applicants answered that there was not. Applicants now assert that neither they nor their counsel were present when NASD's Department of Enforcement ("NASD Enforcement") took Guss's investigative testimony and that they therefore had no opportunity to cross-examine Guss. They therefore argue that fundamental fairness and due process mandate that all testimony and emails involving Guss that were introduced into the record should be stricken.

Hearsay evidence may be admitted in NASD proceedings, depending on its probative value and reliability, and the fairness of its use. 43/ Among the factors we may consider in determining whether to rely on hearsay are possible bias of the declarant; the type of hearsay at issue; whether the statements are signed and sworn to rather than anonymous, oral, or unsworn; whether the statements are contradicted by direct testimony; whether the declarant was available to testify; and whether the hearsay is corroborated. 44/

There is little reason to suspect bias in Guss's testimony or the emails he wrote; to the extent the evidence shows that Guss was required to register as a principal, Guss is implicated in the violation just as Applicants are. 45/ The reliability of the contested evidence is high. Guss's investigative testimony, which was given under oath, is consistent with much of the other testimony in the proceeding, including in many instances that of Applicants. Emails written by Guss are generally consistent with emails written by Gordon and Lee. Thus, direct testimony and other evidence tends to corroborate the contested evidence, not contradict it. Moreover, as the discussion above shows, our conclusions depend not on the resolution of evidentiary conflicts as to what Guss did -- Guss's actions during the relevant period are largely undisputed -- but rather on the conclusions we draw as to whether what he did caused him to be deemed a principal as that term is used in NASD rules. We therefore reject Applicants' argument that the contested evidence should be stricken.

ii. Applicants also argue that the hearing panel should not have "credit[ed] Chicola's testimony and reject[ed Applicants']." Applicants assert that they have a combined total of thirty-six years of licensure without having been sanctioned or reprimanded by NASD,

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43/ See Kevin Lee Otto, 54 S.E.C. 847, 854 & n.12 (2000), aff'd, 253 F.3d 960 (7th Cir. 2001).

44/ Rooney A. Sahai, Exchange Act Rel. No. 51549 (Apr. 15, 2005), 85 SEC Docket 862, 872 & n.21 (citing Charles D. Tom, 50 S.E.C. 1142, 1145 (1992)); Otto, 54 S.E.C. at 854.

45/ As indicated, Guss settled NASD allegations against him. See supra note 13.

whereas Chicola was dismissed from LSVL for cause. We find that Applicants have not provided a sufficient basis for rejecting the hearing panel's determination to credit Chicola.

Credibility determinations by the fact finder deserve special weight, and can be overcome only when there is substantial evidence for doing so. 46/ Substantial evidence corroborates Chicola's testimony as to Guss's role at LSVL. The emails in the record, the testimony of other LSVL employees, the investigative testimony of Guss, and the testimony of Applicants corroborate Chicola's testimony.

B. Misconduct Related to the Pricing of Securities

1. Facts

Between June 6 and August 30, 2002, LSVL effected thirty-one transactions in Pacific CMA, Inc. ("PCCM"), a thinly traded equity security that traded on the Over-the-Counter Bulletin Board. Although executed by the Firm as a dealer, i.e., in a principal capacity from its own proprietary account, each of these trades was "riskless" in that the stock was acquired by the Firm only after the purchasers had agreed to buy the stock. 47/ Although LSVL's riskless principal trades represented at least 65% of the total trading volume of PCCM shares in each of the three months in question, it is undisputed that the Firm was not a market maker in the stock. 48/

46/ Daniel D. Manoff, 55 S.E.C. 1155, 1161-62 & n.6 (2002) (citing cases).

47/ We have defined a riskless principal transaction as one in which "after receiving an order to buy or sell from a customer, the broker-dealer purchases the security from another person to offset a contemporaneous purchase by the customer or sells the security to another person to offset a contemporaneous sale by the customer." Confirmation of Transactions, Exchange Act Rel. No. 33743 (Mar. 9, 1994), 56 SEC Docket 656, 657 n.11. See also Rule 10b-10(a)(2)(ii)(A), 17 C.F.R. § 240.10b-10(a)(2)(ii)(A) (requiring certain disclosures when riskless principal transactions are effected).

As noted above, see supra note 10, Rule 2230 requires disclosure of the amount of any remuneration received in connection with a trade when an NASD member is "acting as a broker" for a customer. Although, as discussed below, see infra text accompanying note 59, a riskless principal trade is the economic equivalent of an agency trade, the Firm technically was acting as a dealer here (rather than a broker), and therefore, by its terms, Rule 2230 does not cover the trades.

48/ Section 3(a)(38) of the Exchange Act, 15 U.S.C. § 78c(a)(38), in relevant part, defines "market maker" as "any dealer who, with respect to a security, holds himself out (by

(continued...)

The PCCM trades at issue were executed using an account that Applicants had established at LSVL for the purpose of conducting riskless principal trades. 49/ These trades were effected as follows: An LSVL registered representative initially identified a shareholder of PCCM who owned and wanted to sell a large block of stock. The registered representative then sought out potential purchasers of the stock. As he found purchasers for varying quantities of the selling shareholder's shares, he matched purchases and sales and called the trades in to Lee. Lee executed all thirty-one of the trades at issue. 50/ Gordon reviewed the supporting documentation for the trades at the end of the month.

LSVL purchased PCCM from the seller at the inside bid, charged the selling customer approximately an additional five percent of the purchase price, and then sold the stock to the previously identified purchasers at the inside offer. 51/ LSVL kept as remuneration the difference between the price it paid to purchase the shares, i.e., the inside bid price less five percent, and the price for which it sold the shares, with the registered representative retaining seventy-five percent of the money and the Firm retaining twenty-five percent. 52/ Applicants do

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48/ (...continued)
entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis." Under Exchange Act Rule 15c3-1, 17 C.F.R. § 240.15c3-1, LSVL, which maintained a minimum net capital of only $5,000, was not permitted to act as a market maker.

49/ Although Lee asserted that the Firm "didn't keep an inventory" and "didn't have an account [where] we would have shares deposited," the record shows that the PCCM shares in question were briefly in the LSVL cross principal trading account between the time they were bought and the time they were sold.

50/ Only Lee and Gordon were authorized to execute trades in the riskless principal trading account.

51/ The inside offer and bid prices, respectively, are the lowest price a dealer is willing to sell at and the highest price a dealer is willing to pay for the security.

52/ On August 8, 2003, Gordon wrote a letter to Commission staff asking for "clarification and/or a no-action letter regarding the specific use of a riskless principal cross-trading account." The letter confirms the testimony given at the hearing, including the fact that LSVL took as its remuneration the difference between the best bid (paid to the seller) and the best offer (received from the buyer). The letter described the trading activity as ongoing rather than proposed and stated that NASD had "questioned the firm's ability to retain the spread due to the fact that it exceeds the 5% mark-up/commission guideline."
(continued...)

not dispute that this resulted in markups ranging from 12.9% to 54.55% on the trades, based on the purchase price of the shares. 53/ The Firm had total profits from these trades of $32,301. 54/

2. Analysis

a. NASD Conduct Rule 2440 states that any securities transaction entered into between a member and its customer must be "at a price which is fair, taking into consideration all relevant circumstances." 55/ NASD's Mark-Up Policy, IM-2440, states that a member firm that enters into any transaction with a customer "in any security at any price not reasonably related to the current market price" violates both Rule 2440 and Conduct Rule 2110, which requires NASD members to observe high standards of commercial honor and just and equitable principles of trade.

Where a firm is not a market maker, the best evidence of the current market price, absent countervailing evidence, is the dealer's contemporaneous cost. 56/ Moreover, when, as here, the trade is a riskless principal transaction, contemporaneous cost must be used as the basis for

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52/ (...continued)
Commission staff declined to provide the interpretive guidance or no-action relief that Gordon requested on the basis that, as a matter of policy, such relief is given only prospectively, not retroactively.

53/ The markups on two trades were 12.9% and 25%; and 29.03% on six other trades. On the remaining twenty-three trades, the markups were 33.3% or higher. These percentages are based on a purchase price that included the approximately five percent charged to the selling customer. If that charge were deducted, the markups would have been even larger because they would be measured from a lower purchase price.

In dollar amounts, the markup profits on the trades ranged from $200 to $3,000.

54/ The extent to which these profits were excessive is discussed below. See infra text accompanying notes 100-01.

55/ See also A.S. Goldmen & Co., 55 S.E.C. 147, 153 (2001) ("The prices that a broker dealer charges its retail customers for securities must be reasonably related to the prevailing market price of the security.").

56/ First Independence Group, 51 S.E.C. 662, 664-65 (1993), aff'd, 37 F.3d 30 (2d Cir. 1994); Adams Sec., Inc., 51 S.E.C. 311, 312 (1993). As discussed above, see supra note 48, LSVL was not a market maker.

calculating markups. 57/ We have previously found that "in the case of riskless principal transactions, where the trades occur virtually simultaneously with the sale to customers, the contemporaneous cost is a particularly reliable indicator of the actual market price." 58/ Moreover, as we have previously explained:

> [A] riskless principal transaction is the economic equivalent of an agency trade. Like an agent, a firm engaging in such trades has no market making function, buys only to fill orders already in hand, and immediately 'books' the shares it buys to its customers. Essentially, the firm serves as an intermediary for others who have assumed the market risk. The firm in these circumstances provides no liquidity to the interdealer market. For this limited role, a firm is adequately compensated by a markup over its cost. 59/

NASD has taken the position that markups for equity securities should generally not exceed five percent. NASD has stated that markups exceeding five percent are generally viewed as excessive and a violation of rules requiring adherence to just and equitable principles of trade and fair pricing unless the member can show the markup charged to be fair under the unique circumstances of the trade. 60/ NASD has also stated that "if a member seeks to charge its

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57/ R.B. Webster Invs., Inc., 52 S.E.C. 288, 291 n.18 (1995); Kevin B. Waide, 50 S.E.C. 932, 934, 936-37 (1992).

58/ First Independence Group, 51 S.E.C. at 665.

59/ Waide, 50 S.E.C. at 935-36 (citations omitted). In Waide, we explained that in riskless principal transactions, contemporaneous cost can play two roles: as factual evidence of the market price and as a fair base upon which to base markups. Id. at 934. We concluded that, even if countervailing evidence tended to show that the dealer's contemporaneous cost did not accurately reflect the market price, fairness nonetheless dictated that contemporaneous cost be used as a base price for calculating markups. Id.

In the analysis below, we follow Waide in using LSVL's contemporaneous cost as the base price for calculating markups. We further note, however, that applicants did not introduce sufficient countervailing evidence to show that LSVL's contemporaneous cost did not accurately reflect the current market price of PCCM.

60/ NASD Notice to Members 92-16 (Apr. 1992), 1992 NASD LEXIS 47, at *7; see also IM-2440 (stating that NASD Board of Governors has reaffirmed "5% policy" on numerous occasions since its adoption in 1947 and has each time "reaffirmed the philosophy" of the policy). The fact that a markup of more than five percent is generally considered excessive does not mean that markups of five percent or less are automatically deemed fair. IM-2440(a)(4); Notice to Members 92-16, 1992 NASD LEXIS 47, at *7-8.

customers more than a 5 percent markup or markdown, it must be fully prepared to justify its reasons for the higher markup or markdown with adequate documentation." 61/

In these riskless principal trades, LSVL was not selling shares from a general supply that it maintained in inventory, but was instead matching orders from a particular buyer and a particular seller, with the trades executed as close as possible to simultaneously. There is no dispute as to the price LSVL paid for the shares – its contemporaneous cost. As noted above, the markups on the trades in question ranged from 12.9% to 54.55% above LSVL's contemporaneous cost. They were therefore presumptively excessive.

The burden of justifying markups in excess of five percent is on the member firm and not, as Applicants suggest, NASD. 62/ Moreover, as noted above, the member firm must establish the reasons for the higher markup with "adequate documentation." 63/ Applicants do not dispute that the markups at issue here all exceeded ten percent above the Firm's contemporaneous cost. Nor do they deny that they were responsible for these markups. Although Applicants claim to have based the Firm's markups on quotations, we have held repeatedly that quotations that are not validated by comparison with actual inter-dealer transactions should not be relied on to establish the prevailing market price, in determining an appropriate retail markup. 64/ As we stated in Adams Securities, Inc., "[Q]uotations only propose a transaction and do not reflect the actual result of a completed arm's-length sale. Moreover, quotations may have little value as evidence of the current market. They often show wide spreads between the bid and ask prices and are likely to be subject to negotiation." 65/

Applicants also claim that the prices they charged, while well above the levels generally deemed fair by NASD, were justified by special circumstances. The special circumstances the Applicants cite are the extra effort and expense that they allege were involved in arranging the trades. Applicants asserted that arranging LSVL's riskless principal transactions in general involved extra efforts and expenditures such as phone contacts, travel, and personal meetings with potential buyers and sellers; investigation to determine whether the stocks in question

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61/ Notice to Members 92-16, 1992 NASD LEXIS 47, at *7.

62/ See, e.g., Steven P. Sanders, 53 S.E.C. 889, 896 (1998) ("It is entirely appropriate that applicants bear the burden of coming forward with evidence justifying markups above 5% because they were in the best position to know about . . . special circumstances surrounding [the] trades.").

63/ Notice to Members 92-16, 1992 NASD LEXIS 47, at *7.

64/ E.g., R.B. Webster Invs., 52 S.E.C. at 291; Adams Sec., Inc., 51 S.E.C. 1092, 1095 (1994).

65/ 51 S.E.C. at 1095 (citation omitted).

should be added to LSVL's approved product list; additional paperwork (especially if a stock was restricted); and complying with requirements to obtain specific disclosures and attestations.

Applicants failed, however, to show how the asserted extra effort and expense with respect to riskless principal trades in general applied to the particular PCCM trades at issue here. Moreover, they provided no documentation of any extra effort or expense associated with those trades. 66/ Gordon's February 11, 2005 letter to NASD stated that he was unfamiliar with the PCCM transactions and therefore could not provide any specific information about them. Lee testified that he did not know how the registered representative who arranged the PCCM trades found the seller, although he believed that Guss may have been the source of the contact. 67/ Lee was unable to provide specifics about any due diligence he did before adding PCCM to LSVL's approved product list, and he had "no idea" whether the stock at issue was restricted.

As stated above, the spread was taken as the markup in every PCCM transaction. Thus, the remuneration retained by LSVL varied based on market quotations, not on effort involved in the transactions. We have previously found the use of such a pricing pattern to "preclude[] any attempt to justify the mark-ups on the basis of the particular circumstances of each sale." 68/

66/ At the hearing, Gordon identified four paragraphs of his letter to Commission staff requesting interpretive guidance or no-action relief as relevant to the circumstances that, in Gordon's view, justified markups of up to fifty-four percent on the trades. These paragraphs, however, merely outline the steps involved (soliciting buyers and sellers and crossing the trades at the best bid and offer), providing no detail as to any extra time or efforts involved in those steps.

Applicants assert that NASD Enforcement stated that unique facts and circumstances justify the higher markups charged. However, viewed in context, Enforcement was by no means agreeing that there were unique facts and circumstances or that the markups were justified; instead, Enforcement counsel was restating Applicants' position in questioning Lee about the alleged unique circumstances.

67/ See supra text following note 26.

68/ J.A. Winston & Co., 42 S.E.C. 62, 69-70 (1964); accord Inv. Planning, Inc., 51 S.E.C. 592, 597-98 (1993) (finding that applicants charged excessive markups where "blanket policy" of charging customers a set percentage markup did not take account of transaction's size, or degree to which customer received "unique" services; "[e]ven assuming that in certain cases enhanced services could have justified higher compensation, applicants did not charge the particular customers who benefited from those services").

(continued...)

Undisclosed markups on sales of securities to retail customers can violate the antifraud provisions of the securities laws if they are not reasonably related to the baseline against which they are measured and if the responsible parties acted with scienter. 69/ We do not, however, find fraud on this record.

b. Exchange Act Rule 10b-10 requires disclosure of markups to customers on riskless principal transactions. 70/ Individuals found to be responsible for a firm's violation of Rule 10b-10 can be found to have violated that rule. 71/ LSVL did not disclose the markups charged on the PCCM trades on customer confirmations. LSVL's supervisory procedures manual made Lee, as chief compliance officer, responsible for maintaining copies of transaction confirmations, and Lee admitted that he received copies of confirmations. He testified that, "as a compliance officer, I take responsibility for [the markups] not being posted on the tickets." Although Lee testified that either he or Gordon had instructed the clearing firm to disclose to customers the compensation that the Firm received in connection with the transactions, Lee failed to follow through to make sure that these instructions were implemented. We therefore find that Lee violated Exchange Act Section 10(b) and was responsible for the Firm's violations of Exchange Act Rule 10b-10.

Although NASD also found Gordon liable for failing to ensure that the confirmations contained appropriate disclosure of the Firm's remuneration, we find that the record does not establish Gordon's liability. Lee was responsible for the contents of the confirmations. The record does not demonstrate that Gordon knew or should have known that Lee was not fulfilling

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68/ (...continued)
The assertion that LSVL "had no intention of taking the spread as compensation" on every riskless principal trade, even if true, is irrelevant. We are concerned here only with the thirty-one trades in PCCM stock with respect to which LSVL did take a markup equivalent to the spread, resulting in excessive markups.

69/ D.E. Wine Invs., Inc., 53 S.E.C. 391, 394 (1998); after remand, 54 S.E.C. 1213 (2001).

70/ See supra note 11. As we have previously observed, the purpose of requiring firms "in what are characterized as 'riskless' principal transactions to disclose their markup or markdown is to 'enable customers to make their own assessments of the reasonableness of transaction costs in relation to the services offered by broker-dealers.'" Marc N. Geman, 54 S.E.C. 1226, 1246 (2001) (quoting Securities Confirmations, Exchange Act Rel. No. 15219 (Oct. 6, 1978), 15 SEC Docket 1245, 1250), aff'd, 334 F.3d 1183 (10th Cir. 2003).

71/ E.g., Hattier, Sanford & Reynoir, 53 S.E.C. 426, 431-32 (1998) (finding that president of firm who reviewed and approved inaccurate confirmations and principal of firm who was informed that confirmations were inaccurate but took no steps to correct them violated Rule 10b-10), aff'd, 163 F.3d 1356 (5th Cir. 1998) (Table).

his responsibility. 72/ We therefore reverse NASD's finding that Gordon was responsible for LSVL's violations of Rule 10b-10. 73/

* * *

For the reasons set forth above, we sustain NASD's findings that Applicants were responsible for the excessive, undisclosed markups charged by LSVL, and that Applicants thereby violated Rules 2110 and 2440 and IM-2440. We also find that Lee violated Section 10(b) of the Exchange Act and was responsible for LSVL's violations of Exchange Act Rule 10b-10.

III.

Exchange Act Section 19(e)(2) directs us to sustain NASD's sanctions unless we find, having due regard for the public interest and the protection of investors, that the sanctions are excessive or oppressive or impose an unnecessary or inappropriate burden on competition. 74/ NASD barred Gordon and Lee in all capacities for their registration violations; imposed additional bars in all capacities for their markup violations; ordered them, jointly and severally, to pay restitution of $20,832.40 plus interest for the excessive markups; and assessed costs. We sustain the bar imposed by NASD for the registration violations because, as explained below, we conclude that Applicants' multi-year acquiescence in Guss's management of LSVL despite his lack of registration poses too great a risk to the markets and investors protected by the self-regulatory system to allow them to remain in the securities industry. Although the markup violations were serious, we have not found them to be fraudulent. We find the bar imposed by NASD for the mark-up violations excessive, and reduce the sanction to a six-month suspension and impose an additional concurrent thirty-day suspension on Lee based on violations of Section 10(b) and Rule 10b-10. We sustain the order of restitution, which we find to be appropriate redress for the customers who were charged the excessive markups. We also conclude that the

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72/ The head of a brokerage firm "is responsible for the firm's compliance with all applicable requirements unless and until he or she reasonably delegates a particular function to another person in the firm, and neither knows nor has reason to know that such a person is not properly performing his or her duties." Kresge, 90 SEC Docket at 3090 n.42 (citing Rita H. Malm, 52 S.E.C. 64, 69 & n.15 (1994)) (additional citations omitted).

73/ See Schidlowski, 48 S.E.C. at 509 ("A firm's president is not automatically at fault when other individuals in the firm engage in misconduct of which he has no reason to be aware.").

74/ 15 U.S.C. § 78s(e)(2). Applicants do not allege, and the record does not show, that NASD's action imposed an undue burden on competition.

sanctions imposed on Applicants will have the salutary effect of deterring others from engaging in the same serious misconduct. 75/

We initially observe that NASD's determination to bar Applicants for the registration violations was consistent with its Sanction Guidelines. 76/ The Sanction Guidelines provide that, for egregious cases of violation of Rule 1021, a bar should be considered. 77/ The Guidelines further provide that in determining the sanction for a Rule 1021 violation, consideration should be given to (1) whether a registration application has been filed and (2) the nature and extent of the unregistered person's responsibilities. 78/ Here, no registration application had been filed, despite the length of time that Guss was involved in managing LSVL. Although Guss's purported responsibilities at LSVL were allegedly limited to Internet-related activities, the record shows that his actual spheres of influence were very widespread. Guss exercised great power through his connection to the principal shareholders of the successive holding companies, so much so that Applicants regarded him as their "boss." The fact that Applicants knowingly tolerated the involvement of an unregistered "boss" for as long as they did made their conduct truly egregious. Moreover, Applicants directed LSVL staff to mention only Guss's involvement as LSVL's webmaster in their dealings with NASD examiners and to put away documents that mentioned him, and Applicants additionally concealed Guss's role from NASD by failing to update LSVL's Form BD to reflect Guss's involvement. Several of NASD's generally applicable considerations in determining sanctions also support the

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75/ In making this determination, we are mindful that although "'general deterrence is not, by itself, sufficient justification for expulsion or suspension . . . it may be considered as part of the overall remedial inquiry.'" PAZ Sec., Inc., 494 F.3d 1059, 1066 (D.C. Cir. 2007) (quoting McCarthy v. SEC, 406 F.3d 179, 189 (2d Cir. 2005)); see also Boruski v. SEC, 289 F.2d 738, 740 (2d Cir. 1961) ("The public interest requires that appropriate sanctions be imposed to secure compliance with the rules, regulations, and policies of both NASD and SEC . . . .").

76/ The Sanction Guidelines have been promulgated by NASD in an effort to achieve greater consistency, uniformity, and fairness in the sanctions that are imposed for violations. NASD Sanction Guidelines 1 (2006 ed.) ("Sanction Guidelines"). Since 1993, NASD has published and distributed the Sanction Guidelines so that members, associated persons, and their counsel will have notice of the types of disciplinary sanctions that may be applicable to various violations. Id. The Guidelines are not NASD rules that are approved by the Commission, but NASD-created guidance for NASD Adjudicators, which the Guidelines define as Hearing Panels and the National Adjudicatory Council. Id. Although the Commission is not bound by the Sanction Guidelines, it uses them as a benchmark in conducting its review under Exchange Act Section 19(e)(2).

77/ Sanction Guidelines at 48.

78/ Id.

imposition of a stringent sanction such as a bar for the registration violations found: Applicants did not accept responsibility for or acknowledge the registration violations to NASD prior to NASD's detection and intervention; Applicants do not assert that they reasonably relied on legal advice as to whether Guss was acting as a principal; Applicants allowed Guss to act as a principal for an extended period of time; Applicants attempted to mislead NASD by failing to identify Guss as a principal and Applicants' conduct was at least reckless, demonstrating what NASD called "a willingness to evade NASD rules that we find troubling." 79/

We previously have noted that "NASD's registration requirement 'provides an important safeguard in protecting public investors,' and 'strict adherence' to that requirement is 'essential'" because it "serves a significant purpose in the policing of the securities markets" and "in the protection of the public interest . . . ." 80/ As we have also observed, the "registered principal is the person at a broker-dealer to whom the NASD looks to ensure compliance with regulatory requirements," 81/ and the registration requirements are intended to ensure that principals "maintain the requisite levels of knowledge and competence." 82/ Thus, regulatory compliance depends to a significant extent on qualifications of the principal.

Applicants enabled Guss to guide the affairs of LSVL as an unregistered principal for more than three years and failed to amend LSVL's Form BD to notify NASD of his involvement. Applicants knew that Guss was not registered and expressed concern in emails about the propriety of his involvement with the Firm's operations. Moreover, Lee testified that he did not think Guss had "a substantial amount of knowledge about NASD rules." Although the record is unclear as to Applicants' awareness of Guss's felony conviction, 83/ Applicants had a duty to ascertain his eligibility and whether he was subject to a disqualification. We agree that, in light of the pervasive management role that Guss exercised, and of Applicants' acquiescence in Guss's managerial activity, the misconduct at issue here was egregious. We therefore do not think it is excessive or oppressive for NASD to impose a bar for Applicants' registration violations. The remedial purpose of a bar in egregious cases is to protect the

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79/ Sanction Guidelines at 6-7.

80/ Flannigan, 56 S.E.C. at 17 (finding that individuals engaged in conduct requiring registration as representatives of an NASD member firm without being so registered) (citations omitted).

81/ Black, 51 S.E.C. at 794.

82/ Jon G. Symon, 54 S.E.C. 102, 110 (1999) (ordering the requalification by examination of a former registered securities principal, whose registrations as a general securities principal and a financial and operations principal had lapsed).

83/ See supra note 15.

investing public from a recurrence of the misconduct. We therefore sustain the bar imposed by NASD for the registration violations.

The Sanction Guidelines recommend suspension of up to two years or a bar for egregious cases of violations of Rules 2110, 2440, and IM-2440. 84/ In determining the sanction for such violations, the Sanction Guidelines indicate that whether Applicants had discretion as to the amount of markup on each trade should be considered. 85/ The Guidelines also generally recommend ordering restitution where appropriate to remediate misconduct. 86/

With respect to the pricing violations, LSVL charged excessive markups of more than ten percent (in many cases, far more than ten percent) in thirty-one retail sales over a three-month period. Applicants did not introduce evidence demonstrating that special circumstances made the markups charged fair; indeed, by taking the spread on all thirty-one transactions at issue, they applied a pricing pattern that precludes any attempt to justify the markups on the basis of the particular circumstances of each individual sale. 87/ Lee also failed to ensure that customers were informed of the markups by disclosure on confirmations, thus depriving them of their ability to assess the reasonableness of the transaction costs they paid. 88/ Applicants had complete discretion as to the markups charged; their roles in running the firm and in setting up the riskless principal trading account, with the intent of taking the spread on each transaction, means that responsibility for the markups charged can be laid squarely at their feet. 89/ Applicants' conduct with respect to the pricing violations evinces a profound disregard for the

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84/ Sanction Guidelines at 95.

85/ Id.

86/ Id. at 4.

87/ Applicants knew that LSVL was not a market maker and therefore could not rely on its role as a market maker as justification for taking the spread.

88/ See Geman, 54 S.E.C. at 1246 (discussing purpose of Rule 10b-10 requirement that dealers disclose markup or markdown in riskless principal transactions). We have previously found that Rule 10b-10, the source of the requirement of confirmation disclosures at issue, "works to protect investors and combat broker-dealer fraud by ensuring full and fair disclosure to investors . . . ." Hattier, Sanford & Reynoir, 53 S.E.C. at 433 n.16.

89/ Sanction Guidelines at 6-7.

essential duty to treat one's customers fairly. 90/ Several of NASD's generally applicable considerations in determining sanctions also support the imposition of serious sanctions for the pricing violations found: Applicants did not accept responsibility for or acknowledge their misconduct prior to detection and intervention by NASD; Applicants did not rely on reasonable legal advice; Applicants engaged in a pattern of misconduct; Applicants' misconduct injured customers who were unknowingly charged excessive markups; and the misconduct resulted in monetary gain to LSVL, and thus indirectly to Applicants through their part-ownership of Envision, the holding company that owned LSVL during the months in question. 91/ We find, however, that, in light of the relatively small number of trades over a three-month period, the sums involved, and the commensurately limited financial benefit to Applicants, the bar imposed by NASD for Applicants' markup violations is excessive, and we therefore impose instead a six-month suspension on both Applicants, and an additional thirty-day suspension (to run concurrently) on Lee based on the violations of Exchange Act Section 10(b) and Exchange Act Rule 10b-10. 92/

Applicants argue that the sanctions imposed by NASD are far too harsh and that the bars imposed are not in the public interest, citing their lack of a previous disciplinary record. 93/ However, lack of disciplinary history is not a mitigating factor. An associated person should not be rewarded for acting in accordance with his duties as a securities professional. 94/ Applicants argue that they should not be barred for isolated negligent violations. As discussed above,

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90/ See Frank L. Palumbo, 52 S.E.C. 467, 480 (1995) (stating that recklessly overcharging customers without justification demonstrates "a marked insensitivity to [the] obligation to deal fairly with customers").

91/ Sanction Guidelines at 6-7.

92/ In reducing the sanction imposed by NASD, we also note that we did not find the markups fraudulent.

93/ Applicants also argue that NASD failed to conduct the analysis required by Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981). NASD is not required to apply Steadman in determining sanctions. NASD did, however, conduct a multi-factor analysis that included many of the Steadman factors, although it did so without tracking the Steadman language.

94/ Philippe N. Keyes, Exchange Act Rel. No. 54723 (Nov. 8, 2006), 89 SEC Docket 792, 801 n.20 (citing Daniel D. Manoff, 55 S.E.C. 1155, 1165-66 & n.15 (2002) (rejecting lack of disciplinary history as mitigating sanction of a bar); Henry E. Vail, 52 S.E.C. 339, 342 (1995) (same), aff'd, 101 F.3d 37 (5th Cir. 1996) (per curiam); Ernest A. Cipriani, 51 S.E.C. 1004, 1007 & n.15 (1994) (same)).

however, their violations were neither isolated nor negligent, and involved turning a blind eye to Guss's extensive participation in the management of the Firm. 95/

Applicants further argue that a bar is inappropriate because they did not engage in criminal conduct. Engaging in criminal conduct could make the imposition of a bar more compelling, but the Guidelines allow the imposition of bars in cases of egregious misconduct whether or not criminal conduct is present. Allowing those who engage in egregious misconduct to remain in the securities industry simply because their conduct does not rise to the level of criminality would be a grave disservice to the market, to investors, and to the public interest.

Applicants argue that Gordon "attempted to cure any possible infractions by requesting from the NASD the nature of any specific violations so that he could take 'corrective action without delay.'" However, Gordon's letter postdated the commencement of NASD's examination of LSVL. Remedial action taken after the initiation of an examination has little mitigative value. 96/

Applicants argue that they should not be barred because the evidence against them is "merely circumstantial." It is unclear which evidence Applicants regard as circumstantial; many of the facts regarding both Guss's involvement at LSVL and the markups charged in the thirty-one transactions at issue are undisputed, and much of the evidence is direct. But to the extent the evidence is circumstantial, there is no impediment to the use of circumstantial evidence in an NASD proceeding. 97/

95/ Applicants argue that if they had intended to engage in wrongdoing, they would have destroyed the emails they turned over during NASD's examination rather than providing them. We do not view the fact that Applicants chose not to engage in this further instance of wrongdoing as a basis for reducing the sanctions imposed on them. Moreover, since NASD's 2003 examination was not announced to LSVL in advance, the fact that evidence was not destroyed proves little. See supra note 28.

96/ Keyes, 89 SEC Docket at 801 & n.21; Arthur Lipper Corp., 46 S.E.C. 78, 98 (1975); see also Sanction Guidelines at 9 (stating that accepting responsibility, acknowledging wrongdoing, employing subsequent corrective measures, and attempting to pay restitution or otherwise remedy misconduct are relevant considerations in sanctioning only if done prior to detection or intervention by a regulator).

97/ See, e.g., Donald M. Bickerstaff, 52 S.E.C. 232, 237-38 (1995) (noting that Supreme Court has stated that "circumstantial evidence can be more than sufficient" in civil actions, and basing finding on such evidence) (quoting Herman & Maclean v. Huddleston, 459 U.S. 375, 390 & n.30 (1983)).

(continued...)

Finally, Applicants argue that NASD Enforcement originally offered to settle this proceeding if Applicants agreed to a suspension and a fine. They contend that this alleged willingness by NASD Enforcement to accept a lesser sanction as appropriate shows that NASD Enforcement did not consider that more stringent sanctions were necessary, but rather acted vindictively when Applicants chose to litigate. The record is devoid of evidence about settlement negotiations between Applicants and NASD Enforcement. 98/ In any event, even if NASD Enforcement proposed to settle the matter if Applicants agreed to a suspension and fine, it is well established that those who offer to settle may properly receive lesser sanctions than they otherwise might have based on "pragmatic considerations such as the avoidance of time-and-manpower-consuming adversary proceedings." 99/

NASD required Applicants to pay restitution in the amount of $20,832.40. 100/ In ordering restitution, NASD considered two measures: (1) LSVL's profit on each transaction in excess of a ten percent markup and (2) LSVL's profit on each transaction in excess of $200. NASD ordered restitution based on the lesser of these two calculations for each transaction, effectively allowing LSVL a $200 "ticket charge" for each transaction. This measure of restitution is quite favorable to Applicants. 101/ NASD provided that Applicants may be given

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97/ (...continued)
We have already dealt with Applicants' objections to the testimony of Chicola and Guss. See supra Section II.A.2.c.

98/ Applicants also contend that "It wasn't until **AFTER** the NASD was stiffed of its money by the member firm, LSVL that the NASD sought the money from [Applicants]. Had LSVL given the NASD the money it so greatly desired, then Enforcement would have sought nothing more from [Applicants than] a short suspension" (emphasis in original). The assertions contained in Applicants' briefs are not evidence. The record does not support an inference that NASD Enforcement's decision to seek a bar and restitution was based on LSVL's failure to pay monies assessed against it. NASD provided that Applicants may be given credit for, and reduce their restitution amount by, restitution amounts that they prove LSVL or Guss paid to injured customers.

99/ See, e.g., David A. Gingras, 50 S.E.C. 1286, 1294 (1992) (NASD review proceeding).

100/ NASD did not assess restitution for one sale in August 2002 for which NASD Enforcement did not identify a purchasing customer.

101/ See also supra note 53 (noting that if NASD had deducted the approximately five percent charge to selling customer from purchase price used in calculating markups, markups would have been even larger). Applicants do not take issue with NASD's restitution
(continued...)

credit for, and reduce their restitution amount by, restitution amounts that they prove LSVL or Guss paid to injured customers. We affirm NASD's order of restitution, a remedial measure that will benefit LSVL's customers who were charged excessive markups.

An appropriate order will issue. 102/

By the Commission (Chairman COX and Commissioners ATKINS and CASEY).

Nancy M. Morris
Secretary

101/ (...continued)
calculations. Our opinion should not be construed as suggesting that markups of ten percent or below or ticket charges of $200 or less are presumptively permissible.

102/ We have considered all of the arguments advanced by the parties. We reject or sustain them to the extent that they are inconsistent or in accord with the views expressed herein.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 57655 / April 11, 2008

Admin. Proc. File No. 3-12573

In the Matter of the Application of

DENNIS TODD LLOYD GORDON
AND
STERLING SCOTT LEE
c/o Joel A. Gordon
Joel A. Gordon & Associates
6666 Harwin Drive, Suite 220
Houston, Texas 77036

For Review of Disciplinary Action Taken by

NASD

ORDER SUSTAINING IN PART AND SETTING ASIDE IN PART DISCIPLINARY ACTION TAKEN BY REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that NASD's findings that Dennis Todd Lloyd Gordon and Sterling Scott Lee violated NASD Rules 1021 and 2110 and were responsible for violations of Article IV, Section 1(c) and Article V, Section 1 of NASD's By-Laws and the sanctions imposed by NASD for these violations be, and they hereby are, sustained; and it is further

ORDERED that NASD's findings that Gordon and Lee violated NASD Rules 2110 and 2440 and IM-2440 and that Lee violated Exchange Act Section 10(b) and was responsible for violations of Exchange Act Rule 10b-10 be, and they hereby are, sustained; and it is further

ORDERED that NASD's findings that Gordon and Lee violated Exchange Act Rule 10b-5 and NASD Rules 2120 and 2230 and that Gordon violated Exchange Act Section 10(b) and was responsible for violations of Exchange Act Rule 10b-10 be, and they hereby are, set aside; and it is further

ORDERED that the permanent bar imposed by NASD for the violations of Exchange Act Section 10(b), Exchange Act Rules 10b-5 and 10b-10, NASD Rules 2110, 2120, 2230, and 2440, and IM-2440, be, and it hereby is, reduced to a six-month suspension, with a concurrent thirty-day suspension in the case of Lee; and it is further

ORDERED that NASD's order of restitution and its assessment of costs be, and they hereby are, sustained.

By the Commission.

Nancy M. Morris
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 57662 / April 14, 2008

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2808 / April 14, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13006

In the Matter of **MELVIN DICK, CPA,** **Respondent.**	**ORDER INSTITUTING PUBLIC ADMINISTRATIVE PROCEEDINGS PURSUANT TO RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative proceedings be, and hereby are, instituted against Melvin Dick, CPA ("Dick" or "Respondent") pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice.[1]

II.

In anticipation of the institution of these proceedings, Dick has submitted an Offer of Settlement ("Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Dick consents to the entry of this Order Instituting Public Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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[1] Rule 102(e)(1)(ii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission . . . to have engaged in . . . improper professional conduct.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

A. SUMMARY

1. This matter concerns improper professional conduct by Melvin Dick, an audit partner with the public accounting firm Arthur Andersen LLP ("Andersen"), in connection with the audit of the financial statements of WorldCom, Inc. ("WorldCom") for its fiscal year ended December 31, 2001. Dick was the lead engagement partner on the audit. As the lead engagement partner, Dick was responsible for planning the conduct and scope of the WorldCom audit and overseeing all of the services performed by the Andersen staff, including reviewing the work performed by Andersen's staff on the 2001 audit. In the planning and performance of that audit, Dick failed to comply with Generally Accepted Auditing Standards ("GAAS") as described below.

B. RESPONDENT

2. Melvin Dick, age 54, resides in Sagle, Idaho. Dick was a partner with Andersen from 1987 to 2002, and was the head of the firm's Global Telecommunications, Entertainment and Media industry practice at the time of Andersen's audit of WorldCom's fiscal year 2001 financial statements. In 2003, Dick allowed his CPA licenses in several jurisdictions to expire, and he currently is not a licensed CPA.

C. RELATED PARTIES

3. Arthur Andersen LLP was, at all times relevant, a limited liability partnership headquartered in Chicago, Illinois that performed, among other things, accounting and consulting services, and was one of the so-called "Big Five" accounting firms in the United States.

4. WorldCom, Inc. was, at all times relevant, a global telecommunications company incorporated in Georgia with its principal offices in Jackson, Mississippi.

D. FACTS

WorldCom's Fraudulent Accounting for Capital Expenditures and Line Cost Expenses

5. From 1998 through 2001, WorldCom made substantial cash outlays to enhance and expand its global telecommunications network. WorldCom recorded these capital expenditures as assets on its balance sheet and grouped them into various categories within Property, Plant & Equipment ("PP&E"), such as Transmission Equipment, Communication Equipment and Furniture, Fixtures & Other.

6. PP&E constituted the second largest category of assets on WorldCom's balance sheet. In any given year, a majority of WorldCom's capital expenditures was related to construction in progress ("CIP"), which represented the accumulated cost of constructing assets before the assets are placed in service. Each of the CIP projects was supposed to be approved through WorldCom's budgetary Authorization for Expenditure ("AFE") process; when approved, AFE numbers were assigned to those projects. WorldCom accumulated the costs incurred for each project in a CIP account. Once the project was completed and ready for use, it was transferred from CIP into the appropriate PP&E "in-service" account, where the asset would begin to be depreciated or expensed.

7. WorldCom tracked the acquisition, disposition, and transfer of its assets on the PP&E Rollforward Schedule ("Rollforward"). Andersen received a copy of the Rollforward each quarter in connection with its quarterly reviews and audit testing. Respondent identified PP&E as a material account for the 2001 WorldCom audit, and designated the capital expenditures cycle at WorldCom as a "critical process."

8. Line costs comprised the largest single expense item on WorldCom's income statement. WorldCom's line costs could be classified into domestic, international and internet line costs, with domestic line costs being the largest of these three categories. A major component of WorldCom's line cost expenses were the fees it paid to third-party telecommunications carriers under long term lease agreements for rights of access to their telecommunications networks. These lease agreements required WorldCom to pay the fees whether or not WorldCom used all of the leased capacity. During 2001, WorldCom's line costs had increased, in large part due to its obligations under the long-term lease agreements it had entered into based on its incorrect anticipation of growth in demand for telecommunications capacity.

9. U.S. Generally Accepted Accounting Principles ("GAAP") required WorldCom to expense its line costs in the period they were incurred because they represented actual or expected cash outflows from ongoing major operations. During 2001, WorldCom improperly removed approximately $3 billion in its line cost expenses from its income statement, improperly and fraudulently characterizing these expenses as "assets" on its balance sheet. This improper accounting was accomplished by manual journal entries to line cost and PP&E accounts.

Failure to Take Engagement Risks Into Consideration

10. In 2001 as well as in prior audits, Andersen utilized a risk-assessment tool it called the "SMART" tool to evaluate risks related to serving an audit client. Application of Andersen's SMART tool by the WorldCom engagement team resulted in a "High" risk classification for the 2001 WorldCom audit. The engagement team, however, manually increased the risk classification to "Maximum," Andersen's highest risk rating, as Andersen had done in the prior year's audit. WorldCom's risk classification was increased due to "the volatility of [its] industry, its future merger and acquisition plans and its reliance on a high stock price to fund those acquisitions."

11. At the time of the 2001 WorldCom audit, Respondent knew that WorldCom's CEO, Bernard Ebbers, owed substantial personal debt secured by the WorldCom stock he owned. Respondent was also aware that Ebbers faced margin calls on this indebtedness as WorldCom's stock price rapidly declined. Respondent was also aware that WorldCom had guaranteed more than $200 million of Ebbers' personal debt. However, the audit workpapers for the 2001 audit did not identify either the financial pressure on Ebbers or the significant decline in WorldCom's stock price as a fraud risk. Respondent did not modify the audit plan to address this risk.

12. Respondent participated in an "Expanded Risk Discussion," required under Andersen policy for all Maximum risk clients, for the 2001 WorldCom audit. During that process, Respondent became aware that in prior years Andersen had identified WorldCom's "aggressive accounting policies" and "desires to maintain high stock valuations in anticipation of a security offering or a merger" as fraud risk factors.

13. At the time of the 2001 audit, Respondent had also learned that in the prior year's audit, Andersen had become aware that in the first quarter of 2000 WorldCom's then Controller had directed the making of a post-closing journal entry, which had no documentary support, to reduce line cost expenses at WorldCom's United Kingdom subsidiary by approximately $33.6 million.

14. Respondent should have reasonably recognized that the deteriorating market conditions in the telecommunications industry created a pressure that also increased the risk of fraud. In 2001, the telecommunications industry experienced a significant downturn, experiencing overcapacity, declining prices paid for services, and declining stock prices. WorldCom's own stock price had declined more or less steadily from a high of $50 in February 2000 to $14 by the end of 2001, a decline of almost seventy percent. WorldCom's revenue growth was reduced, many of its customers were financially ailing or failing. Despite reduced revenue growth, WorldCom had to service massive amounts of debt it had issued. The Andersen audit workpapers, however, fail to reflect consideration of these industry conditions in general or as experienced by WorldCom and their implications on the risk of fraud in the financial statements.

15. Notwithstanding that Respondent knew that management had the ability to override, and had overridden, WorldCom's accounting controls, he failed to exercise due professional care or maintain professional skepticism toward WorldCom in planning and performing the audit. Despite the numerous fraud risks at WorldCom of which he was aware or reasonably should have been aware, Respondent did not ensure the 2001 audit of line costs and PP&E incorporated adequate procedures to obtain reasonable assurance that the financial statements were free of material misstatements as required by GAAS. Respondent's failure to modify the 2001 audit plan, given the increased and significant fraud risks existing at WorldCom, compromised Andersen's ability to detect the massive fraud occurring in WorldCom's PP&E and line costs accounts in 2001.

Failures in Audit of PP&E Accounts

16. Even though Respondent's audit team determined that PP&E was a critical audit area, they failed to perform adequate testing in this area. The audit team's testing was inadequate to determine whether WorldCom's controls were sufficient to prevent material misstatements of PP&E through error or fraud, testing only a subset of the additions to PP&E. Moreover, the auditors only performed testing of additions to PP&E through the end of WorldCom's third quarter, September 30, 2001, and not as of the end of WorldCom's fiscal year.

17. Respondent's audit plan was premised on the inaccurate assumption that all new recorded PP&E had been added through the AFE process and that no additions to PP&E could be made outside of that process. Consequently, the Andersen audit team tested accounting controls on additions to WorldCom's PP&E by selecting a sample of twenty-three open CIP projects identified by AFE numbers, and checked each project for, among other things, the existence of an approved AFE form for the project and noting whether open CIP projects were on schedule to be completed by the expected completion date.

18. While Respondent tested the controls surrounding the segregation of duties of employees involved in the AFE process, Respondent failed to obtain sufficient evidence to determine whether additions to PP&E could be made outside of the AFE process. Respondent also failed to test whether management could circumvent the AFE controls to make potentially improper additions to PP&E, despite being aware of management's ability to manually override controls in place.

19. WorldCom's third quarter Rollforward—which Andersen received in performing the audit—showed total additions to PP&E of approximately $6.4 billion as of September 30, 2001, a figure that included the improper entries made in the course of the fraud. Respondent tested a smaller subset of additions to PP&E, selecting the twenty-three projects from a population of $4.1 billion in open CIP. Had Respondent reconciled the $4.1 billion population tested to the $6.4 billion in total PP&E additions reflected in the third-quarter Rollforward, or in the General Ledger, Respondent would have discovered that Andersen was merely testing a subset of total additions to PP&E. Because the smaller population Respondent tested was only a subset of all additions to PP&E, the testing necessarily could not, and did not, provide Respondent with sufficient competent evidence regarding WorldCom's accounting controls for additions to PP&E.

20. The audit team did not conduct any substantive testing of the PP&E accounts following its testing of an incomplete subset of total PP&E additions as of the end of WorldCom's third quarter. WorldCom subsequently added $841 million in improperly capitalized line costs to its PP&E in the fourth quarter of 2001. The fraudulent additions amounted to nearly half of the total PP&E additions in that quarter. As a result of Andersen's failure to conduct further testing of PP&E balances as of year

end, or to examine PP&E activity as of the balance-sheet date subsequent to its interim testing, these additional improper and fraudulent additions to PP&E were not subject to auditing.

21. Respondent failed to adequately plan the audit to provide for adequate substantive testing of the details of PP&E. Based on the deficient testing of PP&E controls during the audit, Respondent improperly assessed the control risk at below a maximum level and, as a result, planned and performed insufficient audit testing of PP&E.

22. In failing to: take the fundamental step of ensuring that the population of property additions his audit team tested was complete and corresponded to the total property additions reflected in WorldCom's balance sheet; ensure that appropriate testing was done to provide a reasonable basis for extending conclusions regarding PP&E account balances from the date of interim testing to the balance-sheet date; and conduct adequate substantive testing of PP&E accounts, Respondent failed to exercise due professional care (American Institute of Certified Public Accountants ("AICPA"), *Codification of Statements on Auditing Standards*, ("AU") §§ 150.02, 230.01)[2] and professional skepticism (AU § 230.07) in the planning and performance of the audit, and failed to obtain sufficient evidential matter (AU §§ 150.02, 326.01) to provide him with a reasonable assurance that WorldCom's financial statements were free of material misstatement.

Failures in Audit of Line Cost Accounts

23. Respondent failed to exercise due professional care in the planning and performance of the audit (AU §§ 150.02, 230.01), and failed to obtain sufficient competent evidential matter (AU §§ 150.02, 326.01), by failing to reconcile the line cost expenses being audited to the Company's financial statements and general ledger.

24. Had such a reconciliation been included in the audit plan or performed, Respondent's audit team would have discovered that the line cost expenses they were testing were significantly larger than the line cost expenses reflected in WorldCom's financial statements and general ledger. This difference existed because the fraudulent entries reducing those expenses were not included in the schedules Andersen received to audit, but were reflected in the line cost expenses reported in the financial statements.

25. The audit that Respondent designed subjected line cost expenses to testing through the identification and testing of WorldCom's internal controls relevant to line cost expenses. Based on the results of that testing of controls, Respondent determined the control risk was below the maximum risk, and, consequently, insufficient testing of line cost expenses was performed.

26. However, the audit workpapers Respondent reviewed in making his control risk determination did not document how the controls identified and tested were relevant

[2] The AU cites referenced throughout the document pertain to GAAS standards that were in effect in 2001.

to preventing or detecting misstatements in the assertions embodied in the line cost expense account balance. The failure to link specific internal controls to the asserted line cost expense account balance resulted in a failure by Respondent to obtain sufficient evidential matter (AU §§ 150.02, 326.01), in violation of GAAS.

Failure to Review Non-Standard Journal Entries

27. The fraudulent reduction of WorldCom's line cost expenses was accomplished through the recording of large unsupported journal entries, known as on-top or top-side entries, after the close of each quarter, in even monetary amounts ranging from $38.5 million to $600 million.

28. Despite the fact that Respondent's audit team had rated WorldCom as a "Maximum" risk client, despite other risk factors that Respondent either knew or reasonably should have known provided an incentive for fraudulent misstatement of WorldCom's financial statements, and despite Respondent's awareness that management had the ability to override accounting controls, Respondent did not exercise due professional care in the planning and performance of the audit (AU §§ 150.02, 230.01) by failing to design or implement audit procedures to identify and review non-standard journal entries.

29. Respondent placed undue reliance on WorldCom's management's representation that there were no significant top-side entries. Respondent failed to exercise due professional care (AU §§ 150.02, 230.01), maintain an attitude of professional skepticism (AU § 230.07), and to obtain sufficient competent evidential matter (AU §§ 150.02, 326.01), by not planning and performing reasonable audit procedures to identify potentially improper or fraudulent top-side journal entries and by relying on management's representation that there were no significant top-side journal entries.

Inadequate Workpaper Documentation of the Audit

30. Respondent's audit workpapers for the 2001 WorldCom audit did not adequately document the audit procedures applied, tests performed, information obtained and pertinent conclusions reached in the audit engagement and failed to show that the accounting records agree or reconcile with the financial statements (AU § 339). Additionally, key documents purportedly used in performing the audit are not included in the workpapers.

E. VIOLATION

Dick failed to comply with GAAS in connection with the 2001 WorldCom audit by unreasonably: (i) failing to exercise due professional care in the planning and performance of the audit, AU §§ 150.02, 230.01; (ii) failing to exercise an attitude of professional skepticism throughout the audit, AU § 230.07; (iii) failing to obtain sufficient evidential matter to afford a reasonable basis for Andersen's opinion regarding WorldCom's financial statements, AU §§ 150.02, 326.01; (iv) failing to consider expanding the extent of the audit procedures applied, applying procedures closer to or as of year end, particularly in critical audit areas, or modifying the nature of procedures to obtain more persuasive evidence, in light of the significant risks of material misstatement that existed at WorldCom, AU § 312.17; (v) failing to plan and perform the audit to obtain reasonable assurance about whether the financial statements were free of material misstatement, whether caused by error or fraud, AU § 110.02; and (vi) issuing an audit report that falsely stated that the audit was conducted in accordance with GAAS and that WorldCom's financial statements were presented in conformity with GAAP, AU § 508.07.

Rule 102(e)(1)(ii) of the Commission's Rules of Practice provides, in part, that the Commission may censure or deny, temporarily or permanently, the privilege of appearing or practicing before the Commission in any way to any person who is found by the Commission to have engaged in improper professional conduct. Rule 102(e)(1)(iv) defines improper professional conduct with respect to persons licensed to practice as accountants.

As applicable here, improper professional conduct means a violation of applicable standards that resulted from "repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission." (Rule 102(e)(1)(iv)(B)(2)). As a result of the conduct described above, Respondent repeatedly acted unreasonably in failing to conduct or supervise the audit of WorldCom's financial statements for the year ended December 31, 2001 in accordance with GAAS.

F. FINDINGS

Based on the foregoing, the Commission finds that Respondent engaged in improper professional conduct pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Respondent is denied the privilege of appearing or practicing before the Commission as an accountant.

B. After four years from the date of this order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

> (a) Respondent, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;
>
> (b) Respondent, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the Respondent's or the firm's quality control system that would indicate that the Respondent will not receive appropriate supervision;
>
> (c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and
>
> (d) Respondent acknowledges his responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

C. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 57663 / April 14, 2008

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2809 / April 14, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13007

In the Matter of KENNETH M. AVERY, CPA, Respondent.	ORDER INSTITUTING PUBLIC ADMINISTRATIVE PROCEEDINGS PURSUANT TO RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative proceedings be, and hereby are, instituted against Kenneth M. Avery, CPA ("Avery" or "Respondent") pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice.[1]

II.

In anticipation of the institution of these proceedings, Avery has submitted an Offer of Settlement ("Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Avery consents to the entry of this Order Instituting Public Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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[1] Rule 102(e)(1)(ii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission . . . to have engaged in . . . improper professional conduct.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

A. SUMMARY

1. This matter concerns improper professional conduct by Kenneth M. Avery an audit partner with the public accounting firm Arthur Andersen LLP ("Andersen"), in connection with the audit of the financial statements of WorldCom, Inc. ("WorldCom") for its fiscal year ended December 31, 2001. Avery was promoted from manager to audit partner during the 2001 audit of WorldCom. As an audit manager, he helped to plan the conduct and scope of the WorldCom audit, and as an audit partner, he was responsible for supervising the performance of the audit on a day-to-day basis. In the planning and performance of that audit, Avery failed to comply with Generally Accepted Auditing Standards ("GAAS") as described below.

B. RESPONDENT

2. Kenneth M. Avery, age 41, was employed by Andersen from 1990 to May 2002 and became an audit partner in September 2001. Avery first served on the WorldCom audit engagement in September 1998 and became one of the engagement partners during 2001. Avery has been licensed as a CPA in the state of Mississippi since 1992.

C. RELATED PARTIES

3. Arthur Andersen LLP was, at all times relevant, a limited liability partnership headquartered in Chicago, Illinois that performed, among other things, accounting and consulting services, and was one of the so-called "Big Five" accounting firms in the United States.

4. WorldCom, Inc. was, at all times relevant, a global telecommunications company incorporated in Georgia with its principal offices in Jackson, Mississippi.

D. FACTS

WorldCom's Fraudulent Accounting for
Capital Expenditures and Line Cost Expenses

5. From 1998 through 2001, WorldCom made substantial cash outlays to enhance and expand its global telecommunications network. WorldCom recorded these capital expenditures as assets on its balance sheet and grouped them into various categories within Property, Plant & Equipment ("PP&E"), such as Transmission Equipment, Communication Equipment and Furniture, Fixtures & Other.

6. PP&E constituted the second largest category of assets on WorldCom's balance sheet. In any given year, a majority of WorldCom's capital expenditures was

related to construction in progress ("CIP"), which represented the accumulated cost of constructing assets before the assets are placed in service. Each of the CIP projects was supposed to be approved through WorldCom's budgetary Authorization for Expenditure ("AFE") process; when approved, AFE numbers were assigned to those projects. WorldCom accumulated the costs incurred for each project in a CIP account. Once the project was completed and ready for use, it was transferred from CIP into the appropriate PP&E "in-service" account, where the asset would begin to be depreciated or expensed.

7. WorldCom tracked the acquisition, disposition, and transfer of its assets on the PP&E Rollforward Schedule ("Rollforward"). Andersen received a copy of the Rollforward each quarter in connection with its quarterly reviews and audit testing. Respondent identified PP&E as a material account for the 2001 WorldCom audit, and designated the capital expenditures cycle at WorldCom as a "critical process."

8. Line costs comprised the largest single expense item on WorldCom's income statement. WorldCom's line costs could be classified into domestic, international and internet line costs, with domestic line costs being the largest of these three categories. A major component of WorldCom's line cost expenses were the fees it paid to third-party telecommunications carriers under long term lease agreements for rights of access to their telecommunications networks. These lease agreements required WorldCom to pay the fees whether or not WorldCom used all of the leased capacity. During 2001 WorldCom's line costs had increased, in large part due to its obligations under the long-term lease agreements it had entered into based on its incorrect anticipation of growth in demand for telecommunications capacity.

9. U.S. Generally Accepted Accounting Principles ("GAAP") required WorldCom to expense its line costs in the period they were incurred because they represented actual or expected cash outflows from ongoing major operations. During 2001, WorldCom improperly removed approximately $3 billion in its line cost expenses from its income statement, improperly and fraudulently characterizing these expenses as "assets" on its balance sheet. This improper accounting was accomplished by manual journal entries to line cost and PP&E accounts.

Failure to Take Engagement Risks Into Consideration

10. Prior to the 2001 audit, Respondent was aware of several historical fraud risk factors, at least one of which arose during the 2000 audit. In late 2000, Respondent learned that in the first quarter of 2000 WorldCom's then Controller had directed the making of a post-closing journal entry, which had no documentary support, to reduce line cost expenses at WorldCom's United Kingdom subsidiary by approximately $33.6 million. Respondent was aware of this event by the time of the 2001 audit.

11. Respondent knew from his WorldCom audit work prior to 2000 that there was residual audit risk in the area of allowance for doubtful accounts since WorldCom's then Controller had the ability to manually override the computations prepared by WorldCom's staff. In connection with the 1998 audit, Respondent reviewed an audit

workpaper, stating that "A[ndersen] has determined that we will not be able to completely rely on the client's process for determining the adequacy of the allowance for doubtful accounts as the process allows for manual override by senior management (*i.e.* [WorldCom's Controller]). This constitutes residual audit risk...."

12. Respondent also reviewed a workpaper from Andersen's audit for fiscal year 2000 that stated "that [WorldCom] company management will take a short-term view of the business by attempting to manipulate business processes to achieve financial targets. This problem becomes more important for WCOM as its shareholders, as discussed earlier, have high expectations of earnings and growth."

13. These risks still existed at WorldCom at the time of the 2001 audit. In addition, during the 2001 audit, several additional fraud risks existed at WorldCom of which Respondent was aware or should have been aware, as detailed below.

14. In 2001 as well as in prior audits, Andersen utilized a risk assessment tool it called the "SMART" tool to evaluate risks related to serving an audit client. Application of Andersen's SMART tool by the WorldCom engagement team resulted in a "High" risk classification for the 2001 WorldCom audit. The engagement team, however, manually increased the risk classification to "Maximum," Andersen's highest risk rating, as Andersen had done in the prior year's audit. WorldCom's risk classification was increased due to "the volatility of [its] industry, its future merger and acquisition plans and its reliance on a high stock price to fund those acquisitions."

15. At the time of the 2001 WorldCom audit, Respondent knew that WorldCom's CEO, Bernard Ebbers, owed substantial personal debt secured by the WorldCom stock he owned. Respondent was also aware that Ebbers faced margin calls on this indebtedness as WorldCom's stock price rapidly declined. Respondent was also aware that WorldCom had guaranteed more than $200 million of Ebbers' personal debt. However, the audit workpapers for the 2001 audit did not identify either the financial pressure on Ebbers or the significant decline in WorldCom's stock price as a fraud risk. Respondent did not modify the audit plan to address this risk.

16. Respondent participated in an "Expanded Risk Discussion," required under Andersen policy for all Maximum risk clients, for the 2001 WorldCom audit. During that process, Respondent became aware that in prior years Andersen had identified WorldCom's "aggressive accounting policies" and "desires to maintain high stock valuations in anticipation of a security offering or a merger" as fraud risk factors.

17. Respondent should have reasonably recognized that the deteriorating market conditions in the telecommunications industry created a pressure that also increased the risk of fraud. In 2001, the telecommunications industry experienced a significant downturn, experiencing overcapacity, declining prices paid for services, and declining stock prices. WorldCom's own stock price had declined more or less steadily from a high of $50 in February 2000 to $14 by the end of 2001, a decline of almost seventy percent. WorldCom's revenue growth was reduced, many of its customers were

financially ailing or failing. Despite reduced revenue growth, WorldCom had to service massive amounts of debt it had issued. The Andersen audit workpapers, however, fail to reflect consideration of these industry conditions in general or as experienced by WorldCom and their implications on the risk of fraud in the financial statements.

18. Notwithstanding that Respondent knew that management had the ability to override, and had overridden, WorldCom's accounting controls, he failed to exercise due professional care or maintain professional skepticism toward WorldCom in planning and performing the audit. Despite the numerous fraud risks at WorldCom of which he was aware or reasonably should have been aware, Respondent did not ensure the 2001 audit of line costs and PP&E incorporated adequate procedures to obtain reasonable assurance that the financial statements were free of material misstatements as required by GAAS. Respondent's failure to modify the 2001 audit plan, given the increased and significant fraud risks existing at WorldCom, compromised Andersen's ability to detect the massive fraud occurring in WorldCom's PP&E and line costs accounts in 2001.

Failures in Audit of PP&E Accounts

19. Even though Respondent's audit team determined that PP&E was a critical audit area, they failed to perform adequate testing in this area. The audit team's testing was inadequate to determine whether WorldCom's controls were sufficient to prevent material misstatements of PP&E through error or fraud, testing only a subset of the additions to PP&E. Moreover, the auditors only performed testing of additions to PP&E through the end of WorldCom's third quarter, September 30, 2001, and not as of the end of WorldCom's fiscal year.

20. Respondent's audit plan was premised on the inaccurate assumption that all new recorded PP&E had been added through the AFE process and that no additions to PP&E could be made outside of that process. Consequently, the Andersen audit team tested accounting controls on additions to WorldCom's PP&E by selecting a sample of twenty-three open CIP projects identified by AFE numbers, and checked each project for, among other things, the existence of an approved AFE form for the project and noting whether open CIP projects were on schedule to be completed by the expected completion date.

21. While Respondent tested the controls surrounding the segregation of duties of employees involved in the AFE process, Respondent failed to obtain sufficient evidence to determine whether additions to PP&E could be made outside of the AFE process. Respondent also failed to test whether management could circumvent the AFE controls to make potentially improper additions to PP&E, despite being aware of management's ability to manually override controls in place.

22. WorldCom's third quarter Rollforward—which Andersen received in performing the audit—showed total additions to PP&E of approximately $6.4 billion as of September 30, 2001, a figure that included the improper entries made in the course of the fraud. Respondent tested a smaller subset of additions to PP&E, selecting the twenty-

three projects from a population of $4.1 billion in open CIP. Had Respondent reconciled the $4.1 billion population tested to the $6.4 billion in total PP&E additions reflected in the third-quarter Rollforward, or in the General Ledger, Respondent would have discovered that Andersen was merely testing a subset of total additions to PP&E. Because the smaller population Respondent tested was only a subset of all additions to PP&E, the testing necessarily could not, and did not, provide Respondent with sufficient competent evidence regarding WorldCom's accounting controls for additions to PP&E.

23. The audit team did not conduct any substantive testing of the PP&E accounts following its testing of an incomplete subset of total PP&E additions as of the end of WorldCom's third quarter. WorldCom subsequently added $841 million in improperly capitalized line costs to its PP&E in the fourth quarter of 2001. The fraudulent additions amounted to nearly half of the total PP&E additions in that quarter. As a result of Andersen's failure to conduct further testing of PP&E balances as of year end, or to examine PP&E activity as of the balance-sheet date subsequent to its interim testing, these additional improper and fraudulent additions to PP&E were not subject to auditing.

24. Respondent failed to adequately plan the audit to provide for adequate substantive testing of the details of PP&E. Based on the deficient testing of PP&E controls during the audit, Respondent improperly assessed the control risk at below a maximum level and, as a result, planned and performed insufficient substantive audit testing of PP&E.

25. In failing to: take the fundamental step of ensuring that the population of property additions his audit team tested was complete and corresponded to the total property additions reflected in WorldCom's balance sheet; ensure that appropriate testing was done to provide a reasonable basis for extending conclusions regarding PP&E account balances from the date of interim testing to the balance-sheet date; and conduct adequate substantive testing of PP&E accounts, Respondent failed to exercise due professional care (American Institute of Certified Public Accountants ("AICPA"), *Codification of Statements on Auditing Standards*, ("AU") §§ 150.02, 230.01)[2] and professional skepticism (AU § 230.07) in the planning and performance of the audit, and failed to obtain sufficient evidential matter (AU §§ 150.02, 326.01) to provide him with a reasonable assurance that WorldCom's financial statements were free of material misstatement.

Failures in Audit of Line Cost Accounts

26. Respondent failed to exercise due professional care in the planning and performance of the audit (AU §§ 150.02, 230.01), and failed to obtain sufficient competent evidential matter (AU §§ 150.02, 326.01), by failing to reconcile the line cost expenses being audited to the Company's financial statements and general ledger.

[2] The AU cites referenced throughout the document pertain to GAAS standards that were in effect in 2001.

27. Had such a reconciliation been included in the audit plan or performed, Respondent's audit team would have discovered that the line cost expenses they were testing were significantly larger than the line cost expenses reflected in WorldCom's financial statements and general ledger. This difference existed because the fraudulent entries reducing those expenses were not included in the schedules Andersen received to audit, but were reflected in the line cost expenses reported in the financial statements.

28. The audit that Respondent designed subjected line cost expenses to testing through the identification and testing of WorldCom's internal controls relevant to line cost expenses. Based on the results of that testing of controls, Respondent determined the control risk was below the maximum risk, and, consequently, insufficient substantive testing of line cost expenses was performed.

29. However, the audit workpapers Respondent reviewed in making his control risk determination did not document how the controls identified and tested were relevant to preventing or detecting misstatements in the assertions embodied in the line cost expense account balance. The failure to link specific internal controls to the asserted line cost expense account balance resulted in a failure by Respondent to obtain sufficient evidential matter (AU §§ 150.02, 326.01), in violation of GAAS.

Failure to Review Non-Standard Journal Entries

30. The fraudulent reduction of WorldCom's line cost expenses was accomplished through the recording of large unsupported journal entries, known as on-top or top-side entries, after the close of each quarter, in even monetary amounts ranging from $38.5 million to $600 million.

31. Despite the fact that Respondent's audit team had rated WorldCom as a "Maximum" risk client, despite other risk factors that Respondent either knew or reasonably should have known provided an incentive for fraudulent misstatement of WorldCom's financial statements, and despite Respondent's awareness that management had the ability to override accounting controls, Respondent did not exercise due professional care in the planning and performance of the audit by failing to design or implement audit procedures to identify and review non-standard journal entries.

32. Respondent placed undue reliance on WorldCom's management's representation that there were no significant top-side journal entries. Respondent failed to exercise due professional care (AU §§ 150.02, 230.01), maintain an attitude of professional skepticism (AU § 230.07), and to obtain sufficient competent evidential matter (AU §§ 150.02, 326.01), by not planning and performing reasonable audit procedures to identify potentially improper or fraudulent top-side journal entries and by relying on management's representation that there were no significant top-side journal entries.

Inadequate Workpaper Documentation of the Audit

33. Respondent's audit workpapers for the 2001 WorldCom audit did not adequately document the audit procedures applied, tests performed, information obtained and pertinent conclusions reached in the audit engagement and failed to show that the accounting records agree or reconcile with the financial statements (AU § 339). Additionally, key documents purportedly used in performing the audit are not included in the workpapers.

E. VIOLATION

Avery failed to comply with GAAS in connection with the 2001 WorldCom audit by unreasonably: (i) failing to exercise due professional care in the planning and performance of the audit, American Institute of Certified Public Accountants ("AICPA"), *Codification of Statements on Auditing Standards*, ("AU") §§ 150.02, 230.01; (ii) failing to exercise an attitude of professional skepticism throughout the audit, AU § 230.07; (iii) failing to obtain sufficient evidential matter to afford a reasonable basis for Andersen's opinion regarding WorldCom's financial statements, AU §§ 150.02, 326.01; (iv) failing to consider expanding the extent of the audit procedures applied, applying procedures closer to or as of year end, particularly in critical audit areas, or modifying the nature of procedures to obtain more persuasive evidence, in light of the significant risks of material misstatement that existed at WorldCom, AU § 312.17; (v) failing to plan and perform the audit to obtain reasonable assurance about whether the financial statements were free of material misstatement, whether caused by error or fraud, AU § 110.02; and (vi) issuing an audit report that falsely stated that the audit was conducted in accordance with GAAS and that WorldCom's financial statements were presented in conformity with GAAP, AU § 508.07.

Rule 102(e)(1)(ii) of the Commission's Rules of Practice provides, in part, that the Commission may censure or deny, temporarily or permanently, the privilege of appearing or practicing before the Commission in any way to any person who is found by the Commission to have engaged in improper professional conduct. Rule 102(e)(1)(iv) defines improper professional conduct with respect to persons licensed to practice as accountants.

As applicable here, improper professional conduct means a violation of applicable standards that resulted from "repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission." (Rule 102(e)(1)(iv)(B)(2)). As a result of the conduct described above, Respondent repeatedly acted unreasonably in failing to conduct or supervise the audit of WorldCom's financial statements for the year ended December 31, 2001 in accordance with GAAS.

F. FINDINGS

Based on the foregoing, the Commission finds that Respondent engaged in improper professional conduct pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Respondent is denied the privilege of appearing or practicing before the Commission as an accountant.

B. After three years from the date of this order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Respondent, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Respondent, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the Respondent's or the firm's quality control system that would indicate that the Respondent will not receive appropriate supervision;

(c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Respondent acknowledges his responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

C. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release 34-57526A; File No. S7-06-07]

RIN 3235 AJ80

Proposed Rule Changes of Self-Regulatory Organizations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; Correction

SUMMARY: The Securities and Exchange Commission ("Commission") published in the Federal Register of March 27, 2008, a document concerning proposed rule changes by Self-Regulatory Organizations submitted pursuant to Section 19(b)(7)(A) of the Securities Exchange Act of 1934.

DATES: Effective Date: April 28, 2008

FOR FURTHER INFORMATION CONTACT: John Roeser, Assistant Director, at (202) 551-5630, Michou Nguyen, Special Counsel, at (202) 551-5634, or Sherry Moore, Paralegal, at (202) 551-5549, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-6628.

SUPPLEMENTARY INFORMATION: This document corrects the comment due date that was incorrectly stated in the sample 19(b)(7)(A) release published with the final rule.

In rule document E8-5998 beginning on page 16179 in the issue of Thursday, March 27, 2008, make the following correction:

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On page 16196, in the third column, the phrase "should be submitted on or before April 17, 2008." is corrected to read "should be submitted on or before [insert date 21 days from publication in the Federal Register]."

Nancy M. Morris

Nancy M. Morris
Secretary

April 14, 2008

F-1

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
April 16, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13008

In the Matter of **Mitchell M. Maynard and** **Dorice A. Maynard,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940** **AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Mitchell M. Maynard and Dorice A. Maynard (collectively "Respondents" or "Maynards").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. The Respondents are residents of Orange, California and are former residents of the State of Vermont.

2. From at least December 1998 through June 2001, Respondents were associated with Leveraged Index Management Company ("LIMCO"), a Vermont-based investment

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adviser, which was registered with the Commission from April 19, 1999 to January 24, 2001. The Respondents founded LIMCO. Mitchell Maynard served as LIMCO's president, treasurer and investment adviser representative; Dorice Maynard served as its vice-president and corporate secretary.

3. During the relevant period, Respondents were persons associated with an investment adviser.

B. ENTRY OF THE FINAL STATE ORDER

3. On January 3, 2007, the Commissioner for the State of Vermont's Department of Banking, Insurance, Securities, and Health Care Administration issued a decision and order ("Order") against the Respondents in an administrative action entitled *In Re: Mitchell M. Maynard and Dorice A. Maynard*, Docket No. 02-009-S.

4. The Order affirmed that the Respondents violated multiple provisions of Vermont's Securities Act, 9 V.SA. 4224a ("Fraudulent and other prohibited practices"), including section 4224a(a)(1) (prohibiting employing a device, scheme, or artifice to defraud in connection with the sale of a security); section 4224a(a)(2) (prohibiting the making or omitting of an untrue statement of material fact in connection with the sale of a security); section 4224a(a)(3) (prohibiting engaging in an act, practice, or course of business that operates as a fraud or deceit upon a person in connection with the sale of a security); and section 4224a(e)(5) (prohibiting engaging in unethical or dishonest practices in providing investment advice). The Order also barred the Respondents for five years from any association or employment with a registered broker-dealer or investment adviser, or any "federal covered" investment adviser; required them to pay $400,000 in restitution; and imposed a $20,000 administrative penalty.

5. The Order found that, from at least December 1998 to June 2001, at the time they were associated with LIMCO, the Respondents (i) misappropriated investor funds, including by diverting large investments in LIMCO to themselves; (ii) made numerous misrepresentations or omissions about LIMCO's performance and financial condition, including by showing investors high projected rates of return which had no reasonable basis; and (iii) engaged in unethical or dishonest practices, including by failing to disclose a prior bankruptcy to investors.

6. The Respondents did not appeal the Order. By operation of law, the Order became final on February 2, 2007, thirty days after it initially issued. The Order constitutes a final order of a state securities commission (or agency or officer performing like functions) that (i) is based on violations of laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct and (ii) imposes a bar from association with an entity regulated by a state securities commission or from engaging in the business of securities.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 57680 / April 17, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13013

In the Matter of SIDNEY MONDSCHEIN, Respondent.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Sidney Mondschein ("Mondschein" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. From April 2000 through July 31, 2006, Mondschein was a registered representative associated with a broker-dealer registered with the Commission. Mondschein, 51 years old, is a resident of Castro Valley, California.

2. On April 14, 2008, a final judgment was entered by consent against Mondschein, permanently enjoining him from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and from aiding and abetting future violations of Rules 4(a), 5(a), and 10(a)(1) of Regulation S-P, in the civil action entitled Securities and Exchange Commission v. Sidney Mondschein, et al., Civil Action Number CV-07-6178-SI, in the United States District Court for the Northern District of California.

3. The Commission's complaint alleged that: From December 2002 through August, Mondschein sold, as "leads," confidential personal information of over 500 of his brokerage customers in eight separate transactions, involving six different insurance agencies. Mondschein never disclosed to any of his customers that he intended to sell, and did sell, their confidential personal information to insurance agents. In addition, Mondschein affirmatively misled his customers as to the nature of his compensation arrangements and relationships with the various insurance agents.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Mondschein's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act, that Respondent Mondschein be, and hereby is barred from association with any broker, or dealer, with the right to reapply for association after five years to the appropriate self-regulatory organization, or if there is none, to the Commission;

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a

customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Nancy M. Morris
Secretary

By: J. Lynn Taylor
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

April 21, 2008

In the Matter of

Advanced Precision Technology, Inc.
(n/k/a Exact Identification Corp.),
Alta Gold Co.,
Decisionlink, Inc.,
Dover Petroleum Corp.,
Enviro Energy Corp.,
Languageware.net Co. Ltd.,
Playstar Wyoming Holding Corp.
(n/k/a Playstar Corp.),
Uncle B's Bakery, Inc.
(n/k/a Ise Blu Equity Corp.), and
Wavo Corp.,

File No. 500-1

ORDER OF SUSPENSION OF TRADING

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Advanced Precision Technology, Inc. (n/k/a Exact Identification Corp.) because it has not filed any periodic reports since the period ended March 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Alta Gold Co. because it has not filed any periodic reports since the period ended September 30, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Decisionlink, Inc. because it has not filed any periodic reports since the period ended September 30, 2001.

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It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Dover Petroleum Corp. because it has not filed any periodic reports since the period ended March 31, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Enviro Energy Corp. because it has not filed any periodic reports since the period ended March 31, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Languageware.net Co. Ltd. because it has not filed any periodic reports since the period ended September 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Playstar Wyoming Holding Corp. (n/k/a Playstar Corp.) because it has not filed any periodic reports since the period ended June 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Uncle B's Bakery, Inc. (n/k/a Ise Blu Equity Corp.) because it has not filed any periodic reports since the period ended April 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Wavo Corp. because it has not filed any periodic reports since the period ended September 30, 2000.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on April 21, 2008, through 11:59 p.m. EDT on May 2, 2008.

By the Commission.

Nancy M. Morris
Secretary

J. Lynn Taylor

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
April 21, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13014

In the Matter of **Advanced Precision Technology, Inc. (n/k/a Exact Identification Corp.), Alta Gold Co., Decisionlink, Inc., Enviro Energy Corp., and Wavo Corp.,** **Respondents.**	**ORDER INSTITUTING PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Advanced Precision Technology, Inc. (n/k/a Exact Identification Corp.), Alta Gold Co., Decisionlink, Inc., Enviro Energy Corp., and Wavo Corp.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Advanced Precision Technology, Inc. (n/k/a Exact Identification Corp.) ("EXCT"[1]) (CIK No. 844269) is a Nevada corporation located in Lake Oswego, Oregon with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). EXCT is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2001, which reported a net loss of $306,340 for the prior three months. The audit report accompanying EXCT's Form 10-KSB for the period ended December 31, 1999 included a "going concern" paragraph based on the company's development stage status, sustained recurring losses, negative working capital and lack of operations. On March

[1]The short form of each issuer's name is also its stock symbol.

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25, 2002, the company changed its name to Exact Identification Corp. without disclosing that change in periodic reports or recording it in the Commission's EDGAR database, as required by Commission rules. As of April 15, 2008, the common stock of EXCT was quoted on the Pink Sheets, had nine market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3). The common stock of EXCT had an average daily trading volume of 5,206 shares for the six months ended March 7, 2008.

2. Alta Gold Co. ("ATGDQ") (CIK No. 90350) is a Nevada corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ATGDQ is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 1999, which reported a net loss of $7,610,000 for the prior nine months. On April 14, 1999, ATGDQ filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Nevada. The proceeding was terminated on January 2, 2001. As of April 15, 2008, the common stock of ATGDQ was quoted on the Pink Sheets, had eight market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3). The common stock of ATGDQ had an average daily trading volume of 16,056 shares for the six months ended March 7, 2008.

3. Decisionlink, Inc. ("DLNKQ") (CIK No. 811014) is a void Delaware corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). DLNKQ is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2001, which reported a net loss of $6,251,359 for the prior nine months. On December 6, 2001, DLNKQ filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Nevada. The proceeding was terminated on March 24, 2004. As of April 15, 2008, the common stock of DLNKQ was quoted on the Pink Sheets, had eight market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3). The common stock of DLNKQ had an average daily trading volume of 80,322 shares for the six months ended March 7, 2008.

4. Enviro Energy Corp. ("ENGY") (CIK No. 1107080) is a void Delaware corporation located in Spokane, Washington with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ENGY is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2004, which reported a net loss of $227,578 for the prior three months. On October 4, 2004, ENGY filed a Chapter 7 petition in the U.S. Bankruptcy Court for the Eastern District of Washington. The proceeding was dismissed on August 3, 2005. As of April 15, 2008, the common stock of ENGY was quoted on the Pink Sheets, had twelve market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3). The common stock of ENGY had an average daily trading volume of 251,157 shares for the six months ended March 7, 2008.

5. Wavo Corp. ("WAVO") (CIK No. 873287) is a dissolved Indiana corporation located in Phoenix, Arizona with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). WAVO is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2000, which reported a net loss of $23,561,893 for the prior nine months. On October 1, 2001, WAVO was the subject of

an involuntary Chapter 7 petition in the U. S. Bankruptcy Court for the District of Arizona. The proceeding was later converted to a voluntary proceeding and was still pending as of April 15, 2008. As of April 15, 2008, the common stock of WAVO was quoted on the Pink Sheets, had seven market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3). The common stock of WAVO had an average daily trading volume of 40,165 shares for the six months ended March 7, 2008.

B. DELINQUENT PERIODIC FILINGS

6. All of the respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

7. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports (Forms 10-K or 10-KSB), and Rule 13a-13 requires domestic issuers to file quarterly reports (Forms 10-Q or 10-QSB).

8. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke, the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Nancy M. Morris
Secretary

J. Lynn Taylor

Attachment

By: J. Lynn Taylor
Assistant Secretary

Appendix 1

Chart of Delinquent Filings

In the Matter of Advanced Precision Technology, Inc. (n/k/a Exact Identification Corp.), et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Advanced Precision Technology, Inc. (n/k/a Exact Identification Corp.)					
	10-QSB	06/30/01	08/14/01	Not filed	80
	10-QSB	09/30/01	11/14/01	Not filed	77
	10-KSB	12/31/01	04/01/02	Not filed	72
	10-QSB	03/31/02	05/15/02	Not filed	71
	10-QSB	06/30/02	08/14/02	Not filed	68
	10-QSB	09/30/02	11/14/02	Not filed	65
	10-KSB	12/31/02	03/31/03	Not filed	61
	10-QSB	03/31/03	05/15/03	Not filed	59
	10-QSB	06/30/03	08/14/03	Not filed	56
	10-QSB	09/30/03	11/14/03	Not filed	53
	10-KSB	12/31/03	03/30/04	Not filed	49
	10-QSB	03/31/04	05/17/04	Not filed	47
	10-QSB	06/30/04	08/16/04	Not filed	44
	10-QSB	09/30/04	11/15/04	Not filed	41
	10-KSB	12/31/04	03/31/05	Not filed	37
	10-QSB	03/31/05	05/16/05	Not filed	35
	10-QSB	06/30/05	08/15/05	Not filed	32
	10-QSB	09/30/05	11/14/05	Not filed	29
	10-KSB	12/31/05	03/31/06	Not filed	25
	10-QSB	03/31/06	05/15/06	Not filed	23
	10-QSB	06/30/06	08/14/06	Not filed	20
	10-QSB	09/30/06	11/14/06	Not filed	17
	10-KSB	12/31/06	04/02/07	Not filed	12
	10-QSB	03/31/07	05/15/07	Not filed	11
	10-QSB	06/30/07	08/14/07	Not filed	8
	10-QSB	09/30/07	11/14/07	Not filed	5
	10-KSB	12/31/07	03/31/08	Not filed	1
Total Filings Delinquent	27				
Alta Gold Co.					
	10-K	12/31/99	03/30/00	Not filed	97
	10-Q	03/31/00	05/15/00	Not filed	95
	10-Q	06/30/00	08/14/00	Not filed	92
	10-Q	09/30/00	11/14/00	Not filed	89
	10-K	12/31/00	04/02/01	Not filed	84
	10-Q	03/31/01	05/15/01	Not filed	83
	10-Q	06/30/01	08/14/01	Not filed	80
	10-Q	09/30/01	11/14/01	Not filed	77
	10-K	12/31/01	04/01/02	Not filed	72
	10-Q	03/31/02	05/15/02	Not filed	71
	10-Q	06/30/02	08/14/02	Not filed	68
	10-Q	09/30/02	11/14/02	Not filed	65
	10-K	12/31/02	03/31/03	Not filed	61

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Alta Gold Co.	*10-Q*	03/31/03	05/15/03	Not filed	59
(continued)	*10-Q*	06/30/03	08/14/03	Not filed	56
	10-Q	09/30/03	11/14/03	Not filed	53
	10-K	12/31/03	03/30/04	Not filed	49
	10-Q	03/31/04	05/17/04	Not filed	47
	10-Q	06/30/04	08/16/04	Not filed	44
	10-Q	09/30/04	11/15/04	Not filed	41
	10-K	12/31/04	03/31/05	Not filed	37
	10-Q	03/31/05	05/16/05	Not filed	35
	10-Q	06/30/05	08/15/05	Not filed	32
	10-Q	09/30/05	11/14/05	Not filed	29
	10-K	12/31/05	03/31/06	Not filed	25
	10-Q	03/31/06	05/15/06	Not filed	23
	10-Q	06/30/06	08/14/06	Not filed	20
	10-Q	09/30/06	11/14/06	Not filed	17
	10-K	12/31/06	04/02/07	Not filed	12
	10-Q	03/31/07	05/15/07	Not filed	11
	10-Q	06/30/07	08/14/07	Not filed	8
	10-Q	09/30/07	11/14/07	Not filed	5
	10-K	12/31/07	03/31/08	Not filed	1
Total Filings Delinquent	33				
Decisionlink, Inc.					
	10-KSB	12/31/01	04/01/02	Not filed	72
	10-QSB	03/31/02	05/15/02	Not filed	71
	10-QSB	06/30/02	08/14/02	Not filed	68
	10-QSB	09/30/02	11/14/02	Not filed	65
	10-KSB	12/31/02	03/31/03	Not filed	61
	10-QSB	03/31/03	05/15/03	Not filed	59
	10-QSB	06/30/03	08/14/03	Not filed	56
	10-QSB	09/30/03	11/14/03	Not filed	53
	10-KSB	12/31/03	03/30/04	Not filed	49
	10-QSB	03/31/04	05/17/04	Not filed	47
	10-QSB	06/30/04	08/16/04	Not filed	44
	10-QSB	09/30/04	11/15/04	Not filed	41
	10-KSB	12/31/04	03/31/05	Not filed	37
	10-QSB	03/31/05	05/16/05	Not filed	35
	10-QSB	06/30/05	08/15/05	Not filed	32
	10-QSB	09/30/05	11/14/05	Not filed	29
	10-KSB	12/31/05	03/31/06	Not filed	25
	10-QSB	03/31/06	05/15/06	Not filed	23
	10-QSB	06/30/06	08/14/06	Not filed	20
	10-QSB	09/30/06	11/14/06	Not filed	17
	10-KSB	12/31/06	04/02/07	Not filed	12
	10-QSB	03/31/07	05/15/07	Not filed	11
	10-QSB	06/30/07	08/14/07	Not filed	8
	10-QSB	09/30/07	11/14/07	Not filed	5
	10-KSB	12/31/07	03/31/08	Not filed	1
Total Filings Delinquent	25				

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Enviro Energy Corp.					
	10-QSB	06/30/04	08/16/04	Not filed	44
	10-QSB	09/30/04	11/15/04	Not filed	41
	10-KSB	12/31/04	03/31/05	Not filed	37
	10-QSB	03/31/05	05/16/05	Not filed	35
	10-QSB	06/30/05	08/15/05	Not filed	32
	10-QSB	09/30/05	11/14/05	Not filed	29
	10-KSB	12/31/05	03/31/06	Not filed	25
	10-QSB	03/31/06	05/15/06	Not filed	23
	10-QSB	06/30/06	08/14/06	Not filed	20
	10-QSB	09/30/06	11/14/06	Not filed	17
	10-KSB	12/31/06	04/02/07	Not filed	12
	10-QSB	03/31/07	05/15/07	Not filed	11
	10-QSB	06/30/07	08/14/07	Not filed	8
	10-QSB	09/30/07	11/14/07	Not filed	5
	10-KSB	12/31/07	03/31/08	Not filed	1
Total Filings Delinquent	15				
Wavo Corp.					
	10-K	12/31/00	04/02/01	Not filed	84
	10-Q	03/31/01	05/15/01	Not filed	83
	10-Q	06/30/01	08/14/01	Not filed	80
	10-Q	09/30/01	11/14/01	Not filed	77
	10-K	12/31/01	04/01/02	Not filed	72
	10-Q	03/31/02	05/15/02	Not filed	71
	10-Q	06/30/02	08/14/02	Not filed	68
	10-Q	09/30/02	11/14/02	Not filed	65
	10-K	12/31/02	03/31/03	Not filed	61
	10-Q	03/31/03	05/15/03	Not filed	59
	10-Q	06/30/03	08/14/03	Not filed	56
	10-Q	09/30/03	11/14/03	Not filed	53
	10-K	12/31/03	03/30/04	Not filed	49
	10-Q	03/31/04	05/17/04	Not filed	47
	10-Q	06/30/04	08/16/04	Not filed	44
	10-Q	09/30/04	11/15/04	Not filed	41
	10-K	12/31/04	03/31/05	Not filed	37
	10-Q	03/31/05	05/16/05	Not filed	35
	10-Q	06/30/05	08/15/05	Not filed	32
	10-Q	09/30/05	11/14/05	Not filed	29
	10-K	12/31/05	03/31/06	Not filed	25
	10-Q	03/31/06	05/15/06	Not filed	23
	10-Q	06/30/06	08/14/06	Not filed	20
	10-Q	09/30/06	11/14/06	Not filed	17
	10-K	12/31/06	04/02/07	Not filed	12
	10-Q	03/31/07	05/15/07	Not filed	11
	10-Q	06/30/07	08/14/07	Not filed	8
	10-Q	09/30/07	11/14/07	Not filed	5
	10-K	12/31/07	03/31/08	Not filed	1
Total Filings Delinquent	29				

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
April 21, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13015

In the Matter of **Dover Petroleum Corp.,** **Paradigm Advanced Technologies, Inc., and** **Playstar Wyoming Holding Corp.,** **Respondents.**	**ORDER INSTITUTING PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Dover Petroleum Corp., Paradigm Advanced Technologies, Inc., and Playstar Wyoming Holding Corp.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Dover Petroleum Corp. ("DVPC")[1] (CIK No. 1166801) is a defaulted Nevada corporation located in Richmond Hill, Ontario with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). DVPC is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2004, which reported a net loss of $878,394 for the prior three months. As of April 15, 2008, the common stock of DVPC was quoted on the Pink Sheets, had fourteen market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3). The common stock of DVPC had an average daily trading volume of 82,605 shares for the six months ended March 7, 2008.

2. Paradigm Advanced Technologies, Inc. ("PRAV") (CIK No. 1009781) is a void Delaware corporation located in Ontario, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). PRAV is delinquent in its

[1] Where applicable, the short form of each issuer's name is also its ticker symbol.

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periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2002, which reported a net loss of $2,459,587. On November 7, 2003, PRAV filed a Chapter 7 petition in the U.S. Bankruptcy Court for the District of Delaware. The proceeding was terminated on April 21, 2006. As of April 15, 2008, the common stock of PRAV (symbol "PRAV") was traded on the over-the-counter markets.

3. Playstar Wyoming Holding Corp. ("Playstar") (CIK No. 1060205) is an Antigua corporation located in St. John's, Antigua with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Playstar is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended June 30, 2002, which reported a net loss of $934,338 for the prior year.

B. DELINQUENT PERIODIC FILINGS

4. All of the respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

5. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports (Forms 10-K, 10-KSB, or 20-F), and Rule 13a-13 requires domestic issuers to file quarterly reports (Forms 10-Q or 10-QSB). Rule 13a-16 requires foreign private issuers to furnish quarterly and other reports to the Commission under cover of Form 6-K if they make or are required to make the information public under the laws of the jurisdiction of their domicile or in which they are incorporated or organized; if they file or are required to file information with a stock exchange on which their securities are traded and the information was made public by the exchange; or if they distribute or are required to distribute information to their security holders.

6. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1, and 13a-13 or 13a-16 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke, the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Nancy M. Morris
Secretary

J. Lynn Taylor

Attachment

By: J. Lynn Taylor
Assistant Secretary

Appendix 1

Chart of Delinquent Filings

In the Matter of Dover Petroleum Corp., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Dover Petroleum Corp.					
	10-QSB	06/30/04	08/16/04	Not filed	44
	10-QSB	09/30/04	11/15/04	Not filed	41
	10-KSB	12/31/04	03/31/05	Not filed	37
	10-QSB	03/31/05	05/16/05	Not filed	35
	10-QSB	06/30/05	08/15/05	Not filed	32
	10-QSB	09/30/05	11/14/05	Not filed	29
	10-KSB	12/31/05	03/31/06	Not filed	25
	10-QSB	03/31/06	05/15/06	Not filed	23
	10-QSB	06/30/06	08/14/06	Not filed	20
	10-QSB	09/30/06	11/14/06	Not filed	17
	10-KSB	12/31/06	04/02/07	Not filed	12
	10-QSB	03/31/07	05/15/07	Not filed	11
	10-QSB	06/30/07	08/14/07	Not filed	8
	10-QSB	09/30/07	11/14/07	Not filed	5
	10-KSB	12/31/07	03/31/08	Not filed	1
Total Filings Delinquent	15				
Paradigm Advanced Technologies, Inc.					
	10-Q	06/30/02	08/14/02	Not filed	68
	10-Q	09/30/02	11/14/02	Not filed	65
	10-K	12/31/02	03/31/03	Not filed	61
	10-Q	03/31/03	05/15/03	Not filed	59
	10-Q	06/30/03	08/14/03	Not filed	56
	10-Q	09/30/03	11/14/03	Not filed	53
	10-K	12/31/03	03/30/04	Not filed	49
	10-Q	03/31/04	05/17/04	Not filed	47
	10-Q	06/30/04	08/16/04	Not filed	44
	10-Q	09/30/04	11/15/04	Not filed	41
	10-K	12/31/04	03/31/05	Not filed	37
	10-Q	03/31/05	05/16/05	Not filed	35
	10-Q	06/30/05	08/15/05	Not filed	32
	10-Q	09/30/05	11/14/05	Not filed	29
	10-K	12/31/05	03/31/06	Not filed	25
	10-Q	03/31/06	05/15/06	Not filed	23
	10-Q	06/30/06	08/14/06	Not filed	20
	10-Q	09/30/06	11/14/06	Not filed	17
	10-K	12/31/06	04/02/07	Not filed	12
	10-Q	03/31/07	05/15/07	Not filed	11
	10-Q	06/30/07	08/14/07	Not filed	8
	10-Q	09/30/07	11/14/07	Not filed	5
	10-K	12/31/07	03/31/08	Not filed	1
Total Filings Delinquent	23				

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Playstar Wyoming Holding Corp.					
	20-F	06/30/03	12/31/03	Not filed	52
	20-F	06/30/04	12/31/04	Not filed	40
	20-F	06/30/05	01/03/06	Not filed	27
	20-F	06/30/06	01/02/07	Not filed	15
Total Filings Delinquent	4				

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
April 21, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13016

In the Matter of **Empyrean Bioscience, Inc.,** **Languageware.net Co. Ltd., and** **Uncle B's Bakery, Inc.,** **Respondents.**	**ORDER INSTITUTING PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, 7and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Empyrean Bioscience, Inc., Languageware.net Co. Ltd., and Uncle B's Bakery, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Empyrean Bioscience, Inc. ("EMDG") (CIK No. 1074626) is a void Delaware corporation located in Cleveland, Ohio with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). EMDG is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2002, which reported a net loss of $1,591,000 for the prior six months. As of April 15, 2008, the common stock of EMDG was traded on the over-the-counter markets.

2. Languageware.net Co. Ltd. ("LWNTF") (CIK No. 945321) is an Israeli corporation located in Colorado Springs, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). LWNTF is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2000, which reported a net loss of $10,327,000 for the prior nine months. On February 27, 2001, LWNTF filed an application in Jerusalem District Court seeking liquidation of the company under Israeli law on the grounds of insolvency. As of April 15, 2008, the common stock of LWNTF

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was quoted on the Pink Sheets, had six market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3). The common stock of LWNTF had an average daily trading volume of 19,811 shares for the six months ended March 7, 2008.

3. Uncle B's Bakery, Inc. ("Uncle B's") (CIK No. 911886) is an Iowa corporation located in Ellsworth, Iowa with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Uncle B's is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended April 30, 1998, which reported a net loss of $865,854 for the prior nine months. On September 4, 1998, Uncle B's filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Northern District of Iowa. The proceeding was later converted into a Chapter 7 proceeding and was terminated on August 23, 2002.

B. DELINQUENT PERIODIC FILINGS

4. All of the respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

5. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports (Forms 10-K or 10-KSB), and Rule 13a-13 requires domestic issuers to file quarterly reports (Forms 10-Q or 10-QSB).

6. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke, the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Nancy M. Morris
Secretary

J Lynn Taylor

By: J Lynn Taylor
Assistant Secretary

Attachment

Appendix 1

Chart of Delinquent Filings

In the Matter of Empyrean Bioscience, Inc., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Empyrean Bioscience, Inc.					
	10-QSB	09/30/02	11/14/02	Not filed	65
	10-KSB	12/31/02	03/31/03	Not filed	61
	10-QSB	03/31/03	05/15/03	Not filed	59
	10-QSB	06/30/03	08/14/03	Not filed	56
	10-QSB	09/30/03	11/14/03	Not filed	53
	10-KSB	12/31/03	03/30/04	Not filed	49
	10-QSB	03/31/04	05/17/04	Not filed	47
	10-QSB	06/30/04	08/16/04	Not filed	44
	10-QSB	09/30/04	11/15/04	Not filed	41
	10-KSB	12/31/04	03/31/05	Not filed	37
	10-QSB	03/31/05	05/16/05	Not filed	35
	10-QSB	06/30/05	08/15/05	Not filed	32
	10-QSB	09/30/05	11/14/05	Not filed	29
	10-KSB	12/31/05	03/31/06	Not filed	25
	10-QSB	03/31/06	05/15/06	Not filed	23
	10-QSB	06/30/06	08/14/06	Not filed	20
	10-QSB	09/30/06	11/14/06	Not filed	17
	10-KSB	12/31/06	04/02/07	Not filed	12
	10-QSB	03/31/07	05/15/07	Not filed	11
	10-QSB	06/30/07	08/14/07	Not filed	8
	10-QSB	09/30/07	11/14/07	Not filed	5
	10-KSB	12/31/07	03/31/08	Not filed	1
Total Filings Delinquent	22				
Languageware.net Co. Ltd.					
	10-K	12/31/00	04/02/01	Not filed	84
	10-Q	03/31/01	05/15/01	Not filed	83
	10-Q	06/30/01	08/14/01	Not filed	80
	10-Q	09/30/01	11/14/01	Not filed	77
	10-K	12/31/01	04/01/02	Not filed	72
	10-Q	03/31/02	05/15/02	Not filed	71
	10-Q	06/30/02	08/14/02	Not filed	68
	10-Q	09/30/02	11/14/02	Not filed	65
	10-K	12/31/02	03/31/03	Not filed	61
	10-Q	03/31/03	05/15/03	Not filed	59
	10-Q	06/30/03	08/14/03	Not filed	56
	10-Q	09/30/03	11/14/03	Not filed	53
	10-K	12/31/03	03/30/04	Not filed	49
	10-Q	03/31/04	05/17/04	Not filed	47
	10-Q	06/30/04	08/16/04	Not filed	44
	10-Q	09/30/04	11/15/04	Not filed	41
	10-K	12/31/04	03/31/05	Not filed	37
	10-Q	03/31/05	05/16/05	Not filed	35
	10-Q	06/30/05	08/15/05	Not filed	32
	10-Q	09/30/05	11/14/05	Not filed	29
	10-K	12/31/05	03/31/06	Not filed	25
	10-Q	03/31/06	05/15/06	Not filed	23

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Languageware.net Co. Ltd.	*10-Q*	06/30/06	08/14/06	Not filed	20
(continued)	*10-Q*	09/30/06	11/14/06	Not filed	17
	10-K	12/31/06	04/02/07	Not filed	12
	10-Q	03/31/07	05/15/07	Not filed	11
	10-Q	06/30/07	08/14/07	Not filed	8
	10-Q	09/30/07	11/14/07	Not filed	5
	10-K	12/31/07	03/31/08	Not filed	1
Total Filings Delinquent	29				
Uncle B's Bakery, Inc.					
	10-KSB	07/31/98	10/29/98	Not filed	114
	10-QSB	10/31/98	12/15/98	Not filed	112
	10-QSB	01/31/99	03/17/99	Not filed	109
	10-QSB	04/30/99	06/14/99	Not filed	106
	10-KSB	07/31/99	10/29/99	Not filed	102
	10-QSB	10/31/99	12/15/99	Not filed	100
	10-QSB	01/31/00	03/16/00	Not filed	97
	10-QSB	04/30/00	06/14/00	Not filed	94
	10-KSB	07/31/00	10/30/00	Not filed	90
	10-QSB	10/31/00	12/15/00	Not filed	88
	10-QSB	01/31/01	03/19/01	Not filed	85
	10-QSB	04/30/01	06/14/01	Not filed	82
	10-KSB	07/31/01	10/29/01	Not filed	78
	10-QSB	10/31/01	12/17/01	Not filed	76
	10-QSB	01/31/02	03/18/02	Not filed	73
	10-QSB	04/30/02	06/14/02	Not filed	70
	10-KSB	07/31/02	10/29/02	Not filed	66
	10-QSB	10/31/02	12/16/02	Not filed	64
	10-QSB	01/31/03	03/17/03	Not filed	61
	10-QSB	04/30/03	06/16/03	Not filed	58
	10-KSB	07/31/03	10/29/03	Not filed	54
	10-QSB	10/31/03	12/15/03	Not filed	52
	10-QSB	01/31/04	03/16/04	Not filed	49
	10-QSB	04/30/04	06/14/04	Not filed	46
	10-KSB	07/31/04	10/29/04	Not filed	42
	10-QSB	10/31/04	12/15/04	Not filed	40
	10-QSB	01/31/05	03/17/05	Not filed	37
	10-QSB	04/30/05	06/14/05	Not filed	34
	10-KSB	07/31/05	10/31/05	Not filed	30
	10-QSB	10/31/05	12/15/05	Not filed	28
	10-QSB	01/31/06	03/17/06	Not filed	25
	10-QSB	04/30/06	06/14/06	Not filed	22
	10-KSB	07/31/06	10/30/06	Not filed	18
	10-QSB	10/31/06	12/15/06	Not filed	16
	10-QSB	01/31/07	03/19/07	Not filed	13
	10-QSB	04/30/07	06/14/07	Not filed	10
	10-KSB	07/31/07	10/29/07	Not filed	6
	10-QSB	10/31/07	12/17/07	Not filed	4
	10-QSB	01/31/08	03/18/08	Not filed	1
Total Filings Delinquent	39				

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 57705 / April 23, 2008

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2812 / April 23, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13018

In the Matter of **Claude Fernandez (CPA),** **Respondent**	**ORDER INSTITUTING PUBLIC ADMINISTRATIVE PROCEEDINGS PURSUANT TO RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Claude Fernandez ("Respondent" or "Fernandez") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.[1]

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[1] Rule 102(e)(3)(i) provides, in relevant part, that:

> The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

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II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Fernandez, age 55, is a certified public accountant ("CPA") with a lapsed New York license. He has served as Managing Director of W.P. Carey & Co. LLC ("Carey") from 1997 through the present. Fernandez also served as Chief Accounting Officer of Carey from 1997 until June 14, 2007.

2. Carey was, at all relevant times, a Delaware corporation with its principal place of business in New York, New York. Carey is a real estate investment and advisory company. At all relevant times, Carey's common stock was registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and traded on the New York Stock Exchange. Carey is the creator, manager, and advisor to a series of non-traded real estate investment trusts (the "CPA REITs").

3. On March 18, 2008, the Commission filed a complaint against Fernandez in Securities and Exchange Commission v. W.P. Carey & Co. LLC et al. (Civil Action No. 08 Civ. 2846 (JSR) (S.D.N.Y.)). On March 21, 2008, the court entered an order permanently enjoining Fernandez, by consent, (i) from future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 ("Securities Act"), Section 13(b)(5) of the Exchange Act, and Exchange Act Rule 13b2-1, and (ii) from aiding and abetting violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder. Fernandez was also ordered to pay a $75,000 civil money penalty.

4. The Commission's complaint alleged, among other things, that from approximately April 2000 until December 2003, Fernandez, as Carey's Chief Accounting Officer, participated in having the CPA REITs make a series of undisclosed revenue sharing payments totaling approximately $9.7 million to a broker-dealer. These payments were omitted from the offering documents of the CPA REITs and misrepresented in quarterly and annual reports filed with the Commission, including registration statements and periodic reports signed by Fernandez. Fernandez also participated in improperly labeling and misclassifying these payments, which allowed Carey to evade a National Association of Securities Dealers rule limiting broker-dealer compensation payments.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent Fernandez's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Fernandez is suspended from appearing or practicing before the Commission as an accountant.

B. After two years from the date of this order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Respondent, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Respondent, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the Respondent's or the firm's quality control system that would indicate that the Respondent will not receive appropriate supervision;

(c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Respondent acknowledges his responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

C. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the

Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 57704 / April 23, 2008

INVESTMENT COMPANY ACT OF 1940
Release No. 28251 / April 23, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-12753

In the Matter of

PRITCHARD CAPITAL PARTNERS, LLC, THOMAS WARD PRITCHARD, JOSEPH JOHN VANCOOK, AND ELIZABETH ANN MCMAHON,

Respondents.

ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTIONS 9(b) AND 9(f) OF THE INVESTMENT COMPANY ACT OF 1940 AS TO PRITCHARD CAPITAL PARTNERS, LLC, THOMAS WARD PRITCHARD, AND ELIZABETH ANN MCMAHON

I.

On September 7, 2007, the Commission instituted public administrative proceedings pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Thomas Ward Pritchard ("Thomas Pritchard"), and public administrative and cease-and-desist proceedings pursuant to Sections 15(b) and 21C of the Exchange Act and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act") against Pritchard Capital Partners, LLC ("Pritchard Capital"), Joseph John VanCook ("VanCook") and Elizabeth Ann McMahon ("McMahon"). Respondents Thomas Pritchard, Pritchard Capital, and McMahon (collectively, "Respondents") have submitted Offers of Settlement (the "Offers") which the Commission has determined to accept.

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II.

Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

Summary

These proceedings arise out of the late trading of mutual fund shares, books and records violations and failure to supervise. From as early as November 2001 through approximately July 2003 (sometimes referred to herein as "the relevant period"), Pritchard Capital allowed some of its market timing customers, who provided 25% of the firm's revenue in 2003, to late trade mutual fund shares. Virtually all of the late trading occurred through Pritchard Capital's New York office and involved Joseph VanCook and Elizabeth McMahon, two associated persons in that office.[2] Pritchard Capital generally did not document the time that its mutual fund customers actually confirmed their trades. Thomas Pritchard, who was Pritchard Capital's principal owner, managing director and chief compliance officer during the relevant period, failed reasonably to supervise VanCook.

Respondents

1. Pritchard Capital is a Louisiana limited liability company that has been registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act since March 2000. Pritchard Capital is headquartered in Mandeville, Louisiana and, during the relevant period, had branch offices in New York, New York and Atlanta, Georgia. Subsequent to July 2003, Pritchard Capital established branch offices in Houston, Texas and Vienna, Virginia. During the relevant period, Pritchard Capital had customers that engaged in mutual fund trading through Pritchard Capital's New York office.

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[1] The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

[2] On September 7, 2007, the Commission instituted public administrative and cease-and-desist proceedings against VanCook in connection with this matter, alleging that VanCook violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and aided and abetted and caused violations of Section 17(a) of the Exchange Act and Rule 17a-3(a)(6) thereunder and Rule 22c-1, promulgated under Section 22(c) of the Investment Company Act. Administrative Proceeding File No. 3-12753.

2. Thomas Pritchard, age 46, was a resident of Covington, Louisiana during the relevant period, and he is currently a resident of the Commonwealth of Virginia. He is the managing director and majority owner of Pritchard Capital. During the relevant period, Thomas Pritchard was also the chief compliance officer of Pritchard Capital.

3. McMahon, age 39, is a resident of Long Beach, New York. From approximately March 2001 through January 2004, McMahon was associated with Pritchard Capital in its New York office.

Background

4. Pritchard Capital opened its New York office and hired VanCook and McMahon in approximately March 2001. During his tenure at Pritchard Capital, VanCook was instrumental in building the firm's business among customers who traded mutual fund shares.

5. "Late trading" refers to the practice of placing orders to buy or sell mutual fund shares after 4:00 p.m. Eastern Time, the time as of which mutual funds typically calculate their net asset value ("NAV"), but receiving the price based on the NAV already determined as of 4:00 p.m. Late trading can enable the trader to profit from market events that occur after 4:00 p.m. but are not reflected in that day's price.

6. During the relevant period, Pritchard Capital allowed some of its mutual fund customers to late trade mutual fund shares. Virtually all of the late trading occurred through Pritchard Capital's New York office and involved VanCook and McMahon.

Late Trading

7. During the relevant period, Pritchard Capital entered its customers' mutual fund trades through an electronic Mutual Fund Order Entry System ("MFRS") operated by the broker-dealer through which Pritchard Capital cleared its trades (the "clearing broker-dealer"). Pritchard Capital had direct access to the MFRS system, through which mutual fund orders could be entered until 5:30 p.m. Eastern Time on any trading day in any of the funds available through the clearing broker-dealer. Mutual fund trades entered up until 5:30 p.m. would receive the NAV calculated as of 4:00 p.m. that day.

8. The clearing broker-dealer was a dealer within the meaning of Rule 22c-1(a) under the Investment Company Act because it had selling agreements with the mutual funds that were traded through the MFRS system.

9. The clearing broker-dealer supplied Pritchard Capital with written documentation explaining the MFRS system and listing the mutual funds with which the clearing broker-dealer had selling agreements. Among other things, that documentation states that "All orders should be received and time stamped by the close of the NYSE, 4 PM EST."

10. The prospectuses of the mutual funds that were subject to the late trading facilitated by Pritchard Capital contained disclosures stating that the mutual funds calculated their NAV either "at" or "as of" 4:00 p.m. Eastern Time and that an investor would receive the price next calculated after receipt of the order. Consistent with the requirements of Rule 22c-1 under the Investment Company Act, which requires that orders to purchase and sell mutual fund shares be priced at the next-calculated NAV, many of the prospectuses stated that orders received after the close of trading on the NYSE (generally 4:00 p.m.) would receive the public offering price next determined on the following business day. Some of the prospectuses even specified that the time that the broker or financial intermediary received the order "shall be" the time used for determining whether the investor received that day's NAV.

11. Pritchard Capital's customers were permitted to place mutual fund orders by e-mailing or faxing spreadsheets to VanCook and/or McMahon listing proposed or tentative trades. Some of the spreadsheets containing the tentative trades were specifically designated as "tentative" or "contingent" trades. Also, some of the trade sheets or e-mails transmitting the trade sheets expressly instructed Pritchard Capital to wait for the customer's confirming call before entering the trades. The customer's proposed trade order generally was date and time stamped when received, usually before 4:00 p.m. Eastern Time.

12. If a customer submitted tentative mutual fund trades, VanCook and/or McMahon would not actually execute the order through the MFRS system unless and until they received confirmation from the customer. The form of confirmation varied; some customers confirmed their trades by e-mail or facsimile and others confirmed by telephone. The individual at Pritchard Capital who received the trade confirmations would generally make notations on the tentative spreadsheet indicating which trades were to be executed and which were not. On many occasions, customers would wait until after 4:00 p.m. Eastern Time to either confirm trades with Pritchard Capital or to notify Pritchard Capital that they did not wish to do any of the trades previously submitted on the tentative trade sheet.

13. Pritchard Capital generally did not document the time of its customers' final confirmations of tentative mutual fund trades.

14. VanCook and McMahon permitted some of Pritchard Capital's mutual fund customers to buy or sell mutual funds after 4:00 p.m. Eastern Time, the time as of which funds typically calculate their NAV, thus resulting in some of the customers receiving the price based on the NAV already determined as of 4:00 p.m. Eastern Time.

15. One mutual fund trader (the "first trader"), who managed fourteen active market timing accounts at Pritchard Capital confirmed over 90% of his mutual fund orders after 4:00 p.m. and received the NAV calculated as of 4:00 p.m. on the day of the trades. The first trader engaged in over 2,600 mutual fund trades through Pritchard Capital during the relevant period. Both VanCook and McMahon told the first trader that he had to submit his final mutual fund orders by 5:00 p.m.

16. Another mutual fund trader (the "second trader") managed seven market timing accounts at Pritchard Capital during the relevant period. From mid-November 2002 through mid-January 2003, the second trader experimented with a late trading strategy with VanCook. In approximately October or November 2002, the second trader was contemplating terminating his market timing business at Pritchard Capital. VanCook, in an effort to retain the business, proposed to the second trader a trading strategy whereby the second trader could submit mutual fund orders to Pritchard Capital before 4:00 p.m. and subsequently choose to cancel or allow those trades to go through any time up until 5:00 or 5:05 p.m. and still receive that day's NAV. The second trader would decide to trade based on activity in the futures market between 4:45 and 5:00 or 5:05 p.m. VanCook told the second trader that there were other customers at Pritchard Capital that engaged in late trading.

17. VanCook and McMahon would also receive communications from additional customers after 4:00 p.m. placing, modifying or confirming mutual fund trades and would subsequently enter those trades into the MFRS system, knowing that those trades would receive the current day's NAV.

Compensation

18. Pritchard Capital's market timing customers contracted with the firm to provide mutual fund trading services in exchange for a negotiated wrap fee (generally 1.0% to 1.25%) and, in many cases, a $25 per trade transaction fee.

19. During the relevant period, Pritchard Capital retained 50% of the wrap fees related to the business generated by VanCook.

Supervisory Failures

20. During the relevant period, Thomas Pritchard was responsible for developing supervisory policies and procedures at Pritchard Capital.

21. Pritchard Capital and Thomas Pritchard supervised VanCook during the relevant period.

22. Pritchard Capital and Thomas Pritchard failed reasonably to supervise the activities of VanCook with a view to preventing his violations of the federal securities laws in that, among other things:

a. Thomas Pritchard failed reasonably to respond to red flags of potential late trading by VanCook. During his periodic visits to the firm's New York office, Thomas Pritchard's review of files focused on the trade blotters. He gave only a "cursory look" to mutual fund correspondence and trade ticket files. Because of Thomas Pritchard's cursory review, he failed to recognize, and/or failed to respond appropriately to, red flags or indications of wrongdoing by VanCook. For example, many of the "trade ticket files" were designated as "tentative" or "contingent" trades. Some of the trade sheets or e-mails transmitting the trade sheets expressly instructed Pritchard Capital to wait for the customer's confirming call before entering the trades. The contingent nature of the tentative trades, coupled with the ability to enter mutual fund trades as late as 5:30 p.m. Eastern Time through the clearing broker-dealer's MFRS system, merited further inquiry into the potential for late trading; and

b. Pritchard Capital's written supervisory procedures did not contain policies or procedures reasonably designed to prevent or detect illegal late trading by VanCook.

Books and Records

23. During the relevant period, Pritchard Capital, acting through VanCook and McMahon, generally did not prepare conventional order tickets for its mutual fund transactions. Rather, the firm generally created order tickets for its mutual fund orders and trades by retaining the communication (if written or e-mailed) containing the actual or proposed mutual fund order with the time of receipt noted. Pritchard Capital also printed out a screen from the MFRS system that showed the order as entered on the MFRS system.

24. During the relevant period, Pritchard Capital, acting through VanCook and McMahon, failed to make and keep accurate and complete records regarding the terms and conditions of each mutual fund order and the modifications and cancellations of such orders in that, among other things:

a. In the case of tentative or proposed trades, the records evidencing orders frequently were not accurate reflections of the final order and did not clearly document the terms and conditions of the orders and any modifications or cancellations thereof.

b. From approximately May 2003 through July 2003, Pritchard Capital, acting through VanCook and McMahon, failed to make order tickets for mutual fund orders reflecting the time of receipt of such orders; and

c. In those instances, on or after May 2, 2003, where Pritchard time-stamped a tentative mutual fund order prior to 4:00 p.m. Eastern time and subsequently allowed the customer to confirm, cancel or modify that order after 4:00 p.m. Eastern time, without documenting the time of such confirmation, cancellation or modification, Pritchard Capital failed to document a required record.

Violations

25. As a result of the conduct described above, Pritchard Capital willfully violated Section 17(a)(1) of the Exchange Act and Rule 17a-3(a)(6) thereunder, which require that broker-dealers registered with the Commission make and keep current, for prescribed periods, certain books and records. Rule 17a-3(a)(6) requires that registered broker-dealers make and keep "[a] memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. The memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof; the account for which entered; the time the order was received; the time of entry; the price at which executed; the identity of each associated person, if any, responsible for the account; the identity of any other person who entered or accepted the order on behalf of the customer or, if a customer

entered the order on an electronic system, a notation of that entry; and, to the extent feasible, the time of execution or cancellation." Rule 17a-3(a)(6) was amended, effective May 2, 2003, to add the requirement to note the time an order was received from a customer.

26. As a result of the conduct described above, Pritchard Capital willfully aided and abetted and caused the clearing broker's violations of Rule 22c-1, promulgated under Section 22(c) of the Investment Company Act, which provides that no registered investment company issuing any redeemable security, no person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and no principal underwriter of, or dealer in, any such security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

27. As a result of the conduct described above, Pritchard Capital failed reasonably to supervise, within the meaning of Section 15(b)(4) of the Exchange Act, and Thomas Pritchard failed reasonably to supervise, within the meaning of Section 15(b)(6) of the Exchange Act, in that they failed reasonably to supervise VanCook, a person subject to their supervision, with a view to preventing VanCook's violations of the federal securities laws.

28. As a result of the conduct described above, McMahon caused the clearing broker's violations of Rule 22c-1, promulgated under Section 22(c) of the Investment Company Act, which provides that no registered investment company issuing any redeemable security, no person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and no principal underwriter of, or dealer in, any such security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

29. As a result of the conduct described above, McMahon willfully aided and abetted and caused Pritchard Capital's violations of Section 17(a)(1) of the Exchange Act and Rule 17a-3(a)(6) thereunder, which require that broker-dealers registered with the Commission make and keep current, for prescribed periods, certain books and records. Rule 17a-3(a)(6) requires that registered broker-dealers make and keep "[a] memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. The memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof; the account for which entered; the time the order was received; the time of entry; the price at which executed; the identity of each associated person, if any, responsible for the account; the identity of any other person who entered or accepted the order on behalf of the customer or, if a customer entered the order on an electronic system, a notation of that entry; and, to the extent feasible, the time of execution or cancellation." Rule 17a-3(a)(6) was amended, effective May 2, 2003, to add the requirement to note the time an order was received from a customer.

Respondents' Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Pritchard Capital and Thomas Pritchard and cooperation afforded the Commission staff by the Respondents.

Undertakings

30. Ongoing Cooperation by Pritchard Capital. Pritchard Capital undertakes to cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in this Order. In connection with such cooperation, Pritchard Capital has undertaken:

a. To produce, without service of a notice or subpoena, any and all documents and other information reasonably requested by the Commission's staff;

b. To use its best efforts to cause its employees to be interviewed by the Commission's staff at such times as the staff reasonably may direct;

c. To use its best efforts to cause its employees to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission's staff; and

d. That in connection with any testimony of Pritchard Capital to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, Pritchard Capital:

i. Agrees that any such notice or subpoena for Pritchard Capital's appearance and testimony may be served by regular mail on its counsel, Thomas K. Potter, III, Esq., Burr & Forman LLP, 700 Two American Center, 3102 West End Avenue, Nashville, TN 37203; and

ii. Agrees that any such notice or subpoena for Pritchard Capital's appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

In determining whether to accept Pritchard Capital's Offer, the Commission has considered these undertakings.

31. Ongoing Cooperation by Thomas Pritchard. Thomas Pritchard undertakes to cooperate fully with the Commission in any and all investigations, litigations or other proceedings

relating to or arising from the matters described in this Order. In connection with such cooperation, Thomas Pritchard has undertaken:

a. To produce, without service of a notice or subpoena, any and all documents and other information reasonably requested by the Commission's staff;

b. To be interviewed by the Commission's staff at such times as the staff reasonably may request and to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission's staff; and

c. That in connection with any testimony of Thomas Pritchard to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, Thomas Pritchard:

i. Agrees that any such notice or subpoena for his appearance and testimony may be served by regular mail on his counsel, Thomas K. Potter, III, Esq., Burr & Forman LLP, 700 Two American Center, 3102 West End Avenue, Nashville, TN 37203; and

ii. Agrees that any such notice or subpoena for Thomas Pritchard's appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

32. Thomas Pritchard shall provide to the Commission, within thirty (30) days after the end of the nine-month suspension described below, an affidavit that he has complied fully with the sanctions pertaining to him, as described in Section IV. below.

33. In determining whether to accept Thomas Pritchard's Offer, the Commission has considered his undertakings.

34. Ongoing Cooperation by Elizabeth McMahon. McMahon undertakes to cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in this Order. In connection with such cooperation, McMahon has undertaken:

a. To produce, without service of a notice or subpoena, any and all documents and other information reasonably requested by the Commission's staff;

b. To be interviewed by the Commission's staff at such times as the staff reasonably may request and to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission's staff; and

c. That in connection with any testimony of McMahon to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, McMahon:

i. Agrees that any such notice or subpoena for her appearance and testimony may be served by regular mail on her counsel, John D. Tortorella, Esq., Marino Tortorella PC, 437 Southern Boulevard, Chatham, New Jersey 07928-1488; and

ii. Agrees that any such notice or subpoena for McMahon's appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

In determining whether to accept McMahon's Offer, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that Respondent Pritchard Capital:

A. be, and hereby is, censured.

B. cease and desist from committing or causing any violations and any future violations of Section 17(a)(1) of the Exchange Act and Rule 17a-3(a)(6) thereunder and Rule 22c-1 under the Investment Company Act.

C. shall, within thirty (30) days of the entry of this Order, pay disgorgement of $55,000 and prejudgment interest of $17,011.94 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Pritchard Capital as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Katherine S. Addleman, Regional Director, Securities and Exchange Commission, 3475 Lenox Road, NE, Suite 1000, Atlanta, GA 30326-1232.

D. shall, within thirty (30) days of the entry of this Order, pay a civil money penalty in the amount of $50,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Pritchard Capital as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Katherine S. Addleman, Regional Director, Securities and Exchange Commission, 3475 Lenox Road, NE, Suite 1000, Atlanta, GA 30326-1232.

Accordingly, pursuant to Sections 15(b) of the Exchange Act, it is hereby ORDERED that Respondent Thomas Pritchard:

A. be, and hereby is, suspended from association in a supervisory capacity with any broker or dealer for a period of nine months, effective on the second Monday following the entry of this Order.

B. shall, within thirty (30) days of the entry of this Order, pay a civil money penalty in the amount of $50,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Thomas Pritchard as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Katherine S. Addleman, Regional Director, Securities and Exchange Commission, 3475 Lenox Road, NE, Suite 1000, Atlanta, GA 30326-1232.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that Respondent McMahon:

A. be, and hereby is, censured.

B. cease and desist from causing any violations and any future violations of Section 17(a)(1) of the Exchange Act and Rule 17a-3(a)(6) thereunder, and from committing or causing any violations and any future violations of Rule 22c-1 under the Investment Company Act.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 57710A / April 24, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13020

In the Matter of **FIRST MONTAUK SECURITIES CORP. AND HERBERT KURINSKY,** **Respondents.**	**CORRECTED** **ORDER INSTITUTING PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against First Montauk Securities Corp. ("First Montauk") and Herbert Kurinsky ("Kurinsky") (collectively referred to as "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Order"), as set forth below.

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III.

On the basis of this Order and Respondents' Offer, the Commission finds that:[1]

Respondents

1. First Montauk, a New York corporation based in Red Bank, New Jersey, has been registered with the Commission as a broker-dealer since 1983 and is the wholly-owned subsidiary of First Montauk Financial Corp., a publicly traded company. As a broker-dealer, First Montauk primarily conducts retail brokerage business. During the relevant period, however, First Montauk, through its newly formed capital markets group ("Capital Markets Group") headed by its first institutional research analyst, entered into the institutional brokerage business, providing institutional customers with trading assistance as well as research reports on select companies in the computer networking and enterprise software sector.

2. Kurinsky purchased First Montauk in 1986 and was at all relevant times its CEO and president, one of its principals, and a member of its senior management until he retired from First Montauk in February 2006. As First Montauk's primary principal, CEO and President, Kurinsky was responsible to ensure that the firm had in place a supervisory system designed to achieve compliance with all applicable securities laws, rules and regulations. Kurinsky, 76 years old, is a resident of Ocean, New Jersey.

Overview

3. These proceedings arise out of Respondents' failure reasonably to supervise a former First Montauk registered representative, Berton M. Hochfeld ("Hochfeld"), with a view to preventing and detecting his violations of the federal securities laws during a ten-month period from March 2003 through December 2003. In March 2003, First Montauk formed the Capital Markets Group in New York City to accommodate Hochfeld and his team, after joining First Montauk from another brokerage firm where they had been operating in a similar capacity. During that period, Hochfeld, First Montauk's first and only institutional research analyst, wrote numerous research reports on select companies in the computer networking and enterprise software sector, which were distributed to First Montauk's institutional customers and potential customers. At the same time that he wrote such reports for First Montauk, Hochfeld also managed a hedge fund through his management company, Hochfeld Capital Management ("HCM"). On numerous occasions, Hochfeld engaged in illegal "scalping" of securities he covered in his research reports distributed to First Montauk's institutional customers. Specifically, Hochfeld traded in the same stocks covered in his research reports in a manner inconsistent with those reports, without disclosing such inconsistent trades. By

[1] The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

scalping stocks covered in his research reports through his hedge fund Hochfeld violated the antifraud provisions of the federal securities laws.[2]

4. First Montauk failed reasonably to supervise Hochfeld with a view to preventing and detecting his violations of the federal securities laws. Specifically, First Montauk failed to adopt reasonable policies and procedures to monitor Hochfeld's trading so as to prevent and detect the fraudulent conduct described herein.

5. Kurinsky, the firm's CEO and president, failed reasonably to supervise Hochfeld with a view to preventing and detecting his violations of the federal securities laws. Kurinsky improperly delegated supervisory responsibilities to an individual who did not hold a Series 24 license, as required by the National Association of Securities Dealers, Inc. (now FINRA, hereinafter "NASD") for supervisory principals. Moreover, Kurinsky failed to follow-up on his supervisory delegation and failed to address whether reasonable policies and procedures to monitor Hochfeld's activities had been implemented.

6. First Montauk also violated Section 15(b)(7) of the Exchange Act and Rule 15b7-1 thereunder, and Kurinsky aided and abetted and caused First Montauk's violations, by delegating supervisory duties to an individual who did not hold a Series 24 license.

7. First Montauk also failed to comply with the analyst certification requirements of Regulation AC of the Exchange Act in connection with Hochfeld's research reports. For several months after Regulation AC went into effect, First Montauk distributed Hochfeld's reports to up to forty customers and potential customers without certifications by Hochfeld that the views expressed in his research reports accurately reflected his personal views. The research reports also failed to include a certification identifying the type and amount of compensation, if any, Hochfeld received related to specific recommendations or views expressed in the report.

Hochfeld's Scalping Activities

8. In March 2002, First Montauk formed the Capital Markets Group to house Hochfeld as the first in-house institutional research analyst ever employed by First Montauk. In his capacity as research analyst, Hochfeld wrote research reports on numerous companies he covered in the computer networking and enterprise software sector for First Montauk's customers and prospective customers. At the same time, Hochfeld also managed several institutional

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[2] The Commission filed a settled civil action against Hochfeld and HCM on November 23, 2005, based on their scalping activities. Pursuant to that settlement, and without admitting or denying the allegations of the Complaint, Hochfeld and HCM consented to the entry of a judgment permanently enjoining them from future violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, ordering them, jointly and severally, to disgorge a total of $83,460, and to pay a civil penalty of $75,000. SEC v. Hochfeld, 05 CV 9921 (SDNY Jan 5, 2005). In January 2006, the Commission instituted administrative proceedings against Hochfeld based on the injunction, pursuant to which Hochfeld consented to an order barring him from association with any broker-dealer or investment adviser, with a right to reapply after four years. Berton M. Hochfeld, Exch. Act Rel. No. 53160 (Jan. 20, 2006).

customer accounts, accepting and executing trades on their behalf. First Montauk and Kurinsky placed Hochfeld in the firm's New York Branch.

9. While employed as a research analyst at First Montauk, Hochfeld, through HCM, caused the execution of trades on behalf of the Hepplewhite Fund L.P. ("Hepplewhite"), a private hedge fund Hochfeld managed through HCM, his wholly-owned management company. The majority of Hepplewhite's trades were executed through First Montauk, and Hochfeld received commissions on all of those trades. Between March 27, 2003, and December 15, 2003, Hochfeld engaged in a fraudulent practice known as "scalping," specifically, trading securities covered in his research reports in a manner that was contrary to the recommendations he made in those reports, without disclosing those trading activities.

10. On at least 21 occasions, Hochfeld and HCM bought stock in Hepplewhite's accounts prior to issuing positive reports on those stocks, and then sold these shares shortly thereafter. In some instances, Hochfeld caused Hepplewhite's sale of stock multiple times after issuance of a research report, for a total of thirty-one improper sales. Nearly all the sales occurred when the price of stock increased after a positive report. Hepplewhite realized a profit through this improper trading activity. Hochfeld also personally shared in 2% of Hepplewhite's profits as an investor, received a management fee from Hepplewhite and received commissions from First Montauk on all of the improper trades he caused to be made in Hepplewhite's accounts during 2003.

<u>First Montauk and Kurinsky Failed Reasonably to Supervise Hochfeld</u>

11. First Montauk failed reasonably to supervise Hochfeld with a view to preventing his violations of the federal securities laws. In particular, First Montauk failed to prevent and detect Hochfeld's scalping activities because it failed to develop reasonable policies and procedures to monitor Hochfeld's trading in securities he covered in his research reports. In fact, it failed to implement *any* written supervisory rules regarding the content and dissemination of Hochfeld's research reports, and any trading by Hochfeld of securities he covered in his reports. Indeed, First Montauk's written supervisory procedures focused strictly on the firm's retail activities, and failed to address its institutional activities or the new compliance and supervisory issues raised by the creation of the Capital Markets Group.

12. Kurinsky failed reasonably to supervise Hochfeld by failing to develop reasonable policies and procedures at First Montauk regarding Hochfeld's trading in securities he covered in his research reports. Instead, Kurinsky unreasonably delegated supervisory responsibilities regarding Hochfeld and the Capital Markets Group to an individual without a supervisory license. Moreover, Kurinsky also failed to follow up in any way on his delegation of supervisory responsibility. Had he done so, he would have discovered that Hochfeld was not being adequately supervised in respect to his trading activities that related to securities he covered in his research reports.

13. Kurinsky's delegation of his supervisory responsibilities to the unlicensed individual was unreasonable because Kurinsky knew, or was reckless in not knowing, that this person was not registered as a supervisory principal with the NASD.

14. First Montauk profited from Hochfeld's scalping. The profit was in the form of commissions paid to First Montauk for executing Hochfeld's scalping trades, totaling $597.24.

Hochfeld's Violations

15. As a result of the conduct described above, Hochfeld violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

First Montauk's and Kurinsky's Violations

First Montauk and Kurinsky Failed Reasonably to Supervise Hochfeld

16. Section 15(b)(4)(E) of the Exchange Act requires broker-dealers reasonably to supervise persons subject to their supervision, with a view toward preventing violations of the federal securities laws. See, e.g., Dean Witter Reynolds, Inc., Exchange Act Rel. No. 46578 (October 1, 2002). The Commission has emphasized that the "responsibility of broker-dealers to supervise their employees by means of effective, established procedures is a critical component in the federal investor protection scheme regulating the securities markets." Id. Section 15(b)(4)(E) of the Exchange Act provides for the imposition of a sanction against a broker or dealer who "has failed reasonably to supervise, with a view to preventing violations of the securities laws, another person who commits such a violation, if such other person is subject to his supervision." Section 15(b)(6)(A)(i) parallels Section 15(b)(4)(E) and provides for the imposition of sanctions against persons associated with a broker or dealer.

17. As a result of the conduct described above, First Montauk and Kurinsky failed reasonably to supervise Hochfeld with a view to detecting and preventing his violations of the federal securities laws.

First Montauk Violated Section 15(b)(7) of the Exchange Act and Rule 15b7-1 Thereunder, and Kurinsky Aided and Abetted and Caused the Violations

18. Rule 15b7-1, promulgated under Section 15(b)(7) of the Exchange Act, provides in pertinent part that "[n]o registered broker or dealer shall effect any transaction in, or induce the purchase or sale of, any security unless any natural person associated with such broker or dealer who effects or is involved in effecting such transaction is registered or approved in accordance with the standards of training, experience, competence and other qualification standards . . . established by the rules of any national securities exchange or national securities association of which such broker or dealer is a member." For almost two years, First Montauk and Kurinsky delegated the supervision of Hochfeld's research reports and trading activities to an individual who did not pass the required supervisory examination and was not registered as a supervisor under

NASD Rules 1021 and 1022. Kurinsky knew, or was reckless in not knowing, that the individual to whom he delegated supervisory authority was not registered as a supervisory principal.

19. As a result of the conduct described above, First Montauk willfully[3] violated Section 15(b)(7) of the Exchange Act and Rule 15b7-1 thereunder, and Kurinsky willfully aided and abetted and caused First Montauk's violations.

First Montauk Failed to Comply with Regulation AC

20. Regulation AC requires that a broker or dealer or "covered person" that publishes, circulates or provides a research report prepared by a research analyst include in that research report: (A) a certification by the research analyst that the views expressed in the research report accurately reflect the research analyst's personal views about the subject securities and issuers; and (B) a certification that no part of his or her compensation was, is, or will be directly or indirectly related to the specific recommendations or views contained in the research report; or that part or all of his or her compensation was, is, or will be directly or indirectly related to the specific recommendations or views contained in the research report. From April 14, 2003, the date Regulation AC became effective, until January 2004, when Hochfeld resigned, First Montauk issued research reports authored by Hochfeld. Until August 2003, none of those reports contained any certifications by Hochfeld that the views expressed in the report accurately reflected his personal views nor did they state the type and amount of compensation, if any, Hochfeld received related to specific recommendations or views expressed in the report.

21. As a result of the conduct described above, First Montauk willfully violated Regulation AC.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents First Montauk's and Kurinsky's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. First Montauk shall cease and desist from committing or causing any violations and any future violations of Section 15(b)(7) of the Exchange Act, Rule 15b7-1 and Regulation AC promulgated thereunder;

B. Kurinsky shall cease and desist from causing any violations and any future violations of Section 15(b)(7) of the Exchange Act and Rule 15b7-1 promulgated thereunder;

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[3] A willful violation of the securities laws means merely "'that the person charged with the violation knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)).

C. First Montauk is hereby censured;

D. Kurinsky shall be, and hereby is, suspended from association in a supervisory capacity with any broker or dealer for a period of six months, effective on the second Monday following the entry of this Order;

E. IT IS FURTHER ORDERED that Respondent First Montauk shall pay, within 10 days of the entry of this Order, disgorgement of $597.24, prejudgment interest of $145.64, and a civil money penalty in the amount of $100,000, for a total amount of $100,742.88, to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies First Montauk as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Glenn S. Gordon, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Miami Regional Office, 801 Brickell Avenue, 18th Floor, Miami, Florida 33131; and

F. IT IS FURTHER ORDERED that Respondent Kurinsky shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $50,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Kurinsky as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Glenn S. Gordon, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Miami Regional Office, 801 Brickell Avenue, 18th Floor, Miami, Florida 33131.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 249 and 274

[Release Nos. 34-57711; IC-28254; File No. S7-02-08]

RIN 3235-AK05

DISCLOSURE OF DIVESTMENT BY REGISTERED INVESTMENT COMPANIES IN ACCORDANCE WITH SUDAN ACCOUNTABILITY AND DIVESTMENT ACT OF 2007

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting amendments to its forms under the Securities Exchange Act of 1934 and the Investment Company Act of 1940 that will require disclosure by a registered investment company that divests, in accordance with the Sudan Accountability and Divestment Act of 2007, from securities of issuers that the investment company determines, using credible information that is available to the public, conduct or have direct investments in certain business operations in Sudan. The Sudan Accountability and Divestment Act limits civil, criminal, and administrative actions that may be brought against a registered investment company that divests itself from such securities, provided that the investment company makes disclosures in accordance with regulations prescribed by the Commission.

EFFECTIVE DATE: [Insert date of publication in the Federal Register]

FOR FURTHER INFORMATION CONTACT: Devin F. Sullivan, Attorney, Office of Disclosure Regulation, Division of Investment Management, at (202) 551-6784, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5720.

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SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is adopting amendments to Form N-CSR[1] and Form N-SAR[2] under the Securities Exchange Act of 1934 ("Exchange Act")[3] and the Investment Company Act of 1940 ("Investment Company Act").[4]

I. DISCUSSION

On December 31, 2007, the President signed the Sudan Accountability and Divestment Act of 2007 ("Sudan Divestment Act") into law.[5] Among other things, the Sudan Divestment Act provides that no person may bring any civil, criminal, or administrative action against any registered investment company, or any employee, officer, director, or investment adviser of the investment company, based solely upon the investment company divesting from, or avoiding investing in, securities issued by persons that the investment company determines, using credible information that is available to the public, conduct or have direct investments in certain business operations in Sudan.[6] This limitation on actions does not apply to a registered investment company, or any of its employees, officers, directors, or investment advisers, unless the investment company makes disclosures about the divestments in accordance with regulations prescribed by the Commission.[7] To that end, the Sudan Divestment Act requires us to prescribe regulations not later than 120 days after enactment that require disclosure by

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1 17 CFR 294.331 and 274.128.

2 17 CFR 294.330 and 274.101.

3 15 U.S.C. 78a et seq.

4 15 U.S.C. 80a-1 et seq.

5 Pub. L. 110-174, 121 Stat. 2516 (2007).

6 Section 4(a) of the Sudan Divestment Act [to be codified at 15 U.S.C. 80a-13(c)(1)].

7 Section 4(a) of the Sudan Divestment Act [to be codified at 15 U.S.C. 80a-13(c)(2)(B)].

each registered investment company that divests itself of securities in accordance with the Act. The Sudan Divestment Act states that these rules shall require this disclosure to be included in the next periodic report filed under Section 30 of the Investment Company Act following the divestment.[8]

To implement the Sudan Divestment Act, we proposed amendments to Form N-CSR and Form N-SAR that would require disclosure by a registered investment company that divests, in accordance with the Sudan Divestment Act, from securities of issuers that the investment company determines conduct or directly invest in certain business operations in Sudan.[9] We received two comment letters in response to our proposals.[10] The commenters generally supported the proposals, while recommending several changes. We are adopting the proposed amendments with certain modifications suggested by the commenters.

A. Amendments

To implement the Sudan Divestment Act, we are requiring each registered investment company that divests securities in accordance with the Sudan Divestment Act to disclose the divestment on the next Form N-CSR or Form N-SAR that it files following the divestment. Management investment companies will provide the disclosure on Form N-CSR, and unit investment trusts will provide the disclosure on Form N-SAR.[11] We are requiring disclosure of information that will identify the

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8 Section 4(b) of the Sudan Divestment Act.

9 Investment Company Act Release No. 28148 (Feb. 11, 2008) [73 FR 8976 (Feb. 15, 2008)] ("Proposing Release").

10 Letter of Calvert Group, Ltd. (Mar. 14, 2008) ("Calvert letter"); Letter of Investment Company Institute (Mar. 10, 2008) ("ICI letter").

11 Item 6(b) of Form N-CSR; Item 133 of Form N-SAR.

securities divested and the magnitude of the divestment. This includes the issuer's name; exchange ticker symbol; Committee on Uniform Securities Identification Procedures ("CUSIP") number; total number of shares or, for debt securities, principal amount divested; and dates that the securities were divested.[12] In addition, if the registered investment company continues to hold any securities of the divested issuer, it will be required to disclose the exchange ticker symbol; CUSIP number; and total number of shares or, for debt securities, principal amount of such securities, held on the date of filing.[13] We believe that this disclosure is in the public interest and protects investors.

One commenter suggested that the Commission require disclosure of divestments in accordance with the Sudan Divestment Act in shareholder reports, as well as in Form N-CSR and Form N-SAR, in order to bring more prominence to the issue and make the information more easily accessible by shareholders.[14] Consistent with the Sudan Divestment Act, which directs the Commission to prescribe regulations that "require the disclosure to be included in the next periodic report filed with the Commission," (emphasis added)[15] we are not making the requested change. We have concluded that disclosure of divestments under the Sudan Divestment Act in Form N-CSR and Form N-SAR, coupled with existing requirements for complete quarterly portfolio holdings disclosure in semi-annual shareholder reports and on Form N-Q filed with the

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12 Item 6(b)(1)-(5) of Form N-CSR; Item 133.A.-E. of Form N-SAR. We are also adopting technical amendments to Form N-SAR to change cross-references to Item 132 to reflect the addition of Item 133.

13 Item 6(b)(6) of Form N-CSR; Item 133.F. of Form N-SAR.

14 Calvert letter at 3.

15 Section 4(b) of the Sudan Divestment Act.

Commission, will provide shareholders with ready access to information about such divestments.

We also received comment recommending that, rather than requiring disclosure of divestment of securities in accordance with the Sudan Divestment Act on the next Form N-CSR or Form N-SAR filed following such divestment, we should instead require disclosure of divestments made during the period covered by the financial information included with the Form N-CSR or Form N-SAR (i.e., the prior semi-annual fiscal period).[16] Under this recommendation, a divestment made between the close of a semi-annual fiscal period and the filing of the Form N-CSR or Form N-SAR for that period would not be disclosed in that Form but would be disclosed on the next succeeding Form N-CSR or Form N-SAR. Disclosure of a divestment made shortly after the close of a semi-annual fiscal period would be delayed for approximately 10 months. Consistent with the Sudan Divestment Act,[17] we are not adopting that recommendation but instead are adopting the rule as proposed. We are requiring the disclosure to be included in the next periodic report filed with the Commission,[18] which will help to reduce extended delays between divestments and the associated disclosure to investors.

One commenter recommended that the amendments not require disclosure of the exchange ticker symbol and CUSIP number of securities divested in accordance with the

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16 ICI letter at 2-3.

17 Section 4(b) of the Sudan Divestment Act.

18 As proposed, a registered investment company that divests securities in accordance with the Sudan Divestment Act during the period that begins on the fifth business day before the date of filing a Form N-CSR or Form N-SAR and ends on the date of filing may disclose the divestment in either that filing or an amendment thereto. The registered investment company must file the amendment not later than five business days after the date of filing the Form N-CSR or Form N-SAR. Instruction 2. to Item 6(b) of Form N-CSR; Instructions to Item 133 of Form N-SAR.

Sudan Divestment Act.[19] We are retaining this requirement, which we believe will help to more precisely identify the specific securities for which a registered investment company may claim the benefit of the limitation on actions provided by the Sudan Divestment Act.

Both commenters addressed the proposed requirement that a registered investment company disclose information about continued holdings of securities of a divested issuer. One commenter supported it as enhancing investment company accountability to shareholders.[20] The other commenter opposed it on the grounds that the Sudan Divestment Act's limitation on actions only requires disclosure made in connection with a decision to divest and that this additional disclosure is unnecessary because registered investment companies are already required to disclose their portfolio holdings.[21] We are retaining this requirement because we believe that it will help assure that investors do not confuse a registered investment company's divestment from a portion of its holdings of a particular issuer's securities with divestment from all of its holdings of that issuer's securities. The disclosure of portfolio holdings that is currently required will not necessarily prevent such confusion because that disclosure is required as of the end of each fiscal quarter, which often will not coincide with the date of a divestment.

We are adopting, as proposed, Instructions to Form N-CSR and Form N-SAR clarifying that while a registered investment company is not required to disclose divestments of securities of an issuer that conducts or has direct investments in certain

19 ICI letter at 2.

20 Calvert letter at 3.

21 ICI letter at 3.

business operations in Sudan, the limitation on actions provided in the Sudan Divestment Act does not apply with respect to a divestment that is not disclosed.[22] We are also adopting, as proposed, Instructions to Form N-CSR and Form N-SAR providing that, for purposes of determining when a divestment should be reported, if a registered investment company divests its holdings in a particular security in a related series of transactions, the company may deem the divestment to occur at the time of the final transaction in the series.[23] We received no comments on these Instructions.

B. Termination Provision

The provisions of the Sudan Divestment Act concerning registered investment company divestments terminate 30 days after the President certifies to Congress that the Government of Sudan has undertaken certain actions.[24] We are adopting a termination provision in order to clarify that the new disclosure requirements will not apply to divestitures occurring after the investment company provisions of the Sudan Divestment Act terminate. Both Form N-CSR and Form N-SAR will provide for termination of the amendments we are adopting one year after the date on which the related provisions of the Sudan Divestment Act terminate pursuant to the terms of the Act. The termination provision responds to commenters' requests that we include a provision terminating the amendments to the forms that is parallel to the termination provision of the Sudan Divestment Act.[25] We have provided that the amendments terminate one year after termination pursuant to the Sudan Divestment Act to allow sufficient time for disclosure,

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22 Instruction 1. to Item 6(b) of Form N-CSR; Instructions to Item 133 of Form N-SAR.

23 Instruction 3. to Item 6(b) of Form N-CSR; Instructions to Item 133 of Form N-SAR.

24 Section 12 of the Sudan Divestment Act.

25 Calvert letter at 3; ICI letter at 3-4.

after termination of the Act's provisions, of divestments that occur prior to termination of the Act's provisions.[26]

C. Effective Date

The amendments to the Commission's forms are effective immediately, in accordance with the Administrative Procedure Act, which permits rules to become effective less than 30 days after publication as "provided by the agency for good cause found and published with the rule."[27] The Commission finds that good cause exists for immediate effectiveness in light of the statutory requirement that the Commission prescribe regulations not later than 120 days after the date of the enactment of the Sudan Divestment Act.[28]

D. Transition Period

We solicited comment on whether our amendments should address divestments that occur after the enactment of the Sudan Divestment Act and before the effective date of our amendments. As suggested by a commenter,[29] the Rule permits a registered investment company that makes a divestment in accordance with the Sudan Divestment Act between December 31, 2007 (the date of enactment), and [Insert date of publication in the Federal Register] (the effective date of the form amendments), and that filed a Form N-CSR or Form N-SAR after the divestment but before [Insert date of publication in the Federal Register], to disclose the divestment on an amendment to that Form N-CSR or Form N-SAR filed no later than [Insert date that is 10 business days after the

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26 Item 6(b) of Form N-CSR; Item 133 of Form N-SAR.

27 5 U.S.C. 553(d)(3).

28 Section 4(b) of the Sudan Divestment Act.

29 ICI letter at 3.

date of publication in the Federal Register]. This provision will permit registered investment companies, and their employees, officers, directors, and investment advisers, to rely on the Sudan Divestment Act's limitation on actions for divestments that occurred after enactment but before the effective date of our form amendments. The period between [Insert date of publication in the Federal Register], the effective date of our form amendments, and [Insert date that is 10 business days after the date of publication in the Federal Register], the latest permitted transition filing date, should provide registered investment companies with a reasonable opportunity to review the form amendments and make any necessary filing.

II. PAPERWORK REDUCTION ACT

The form amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[30] The titles for the collections of information are "Form N-CSR under the Investment Company Act of 1940 and Securities Exchange Act of 1934, Certified Shareholder Report," and "Form N-SAR under the Investment Company Act of 1940, Semi-Annual Report for Registered Investment Companies." We published notice soliciting comments on the collection of information requirements in the release proposing the amendments[31] and submitted the proposed collections of information to OMB for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. We received no comments on the collection of information requirements. OMB has approved the collections of information.

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[30] 44 U.S.C. 3501 et seq.

[31] See Proposing Release, supra note 9, 73 FR at 8978.

Form N-CSR (OMB Control No. 3235-0570) under the Exchange Act and the Investment Company Act[32] is used by registered management investment companies filing certified shareholder reports. Form N-SAR (OMB Control No. 3235-0330) under the Exchange Act and the Investment Company Act[33] is used by registered investment companies to file periodic reports with the Commission. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

A. Summary of Amendments

The Sudan Divestment Act, enacted on December 31, 2007, requires the Commission to prescribe regulations not later than 120 days after enactment that require disclosure by each registered investment company that divests itself of securities in accordance with the Act.[34] The Sudan Divestment Act states that these rules shall require this disclosure to be included in the next periodic report filed under Section 30 of the Investment Company Act following the divestment.[35]

To implement the Sudan Divestment Act, we are requiring each registered investment company that divests securities in accordance with the Sudan Divestment Act to disclose the divestment on the next Form N-CSR or Form N-SAR that it files following the divestment. Management investment companies will provide the disclosure on Form N-CSR, and unit investment trusts will provide the disclosure on

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32 17 CFR 249.331 and 17 CFR 274.128.

33 17 CFR 249.330 and 17 CFR 274.101.

34 Section 4(b) of the Sudan Divestment Act.

35 Id.

Form N-SAR.[36] We are requiring disclosure of information that will identify the securities divested and the magnitude of the divestment. This includes the issuer's name; exchange ticker symbol; CUSIP number; total number of shares or, for debt securities, principal amount divested; and dates that the securities were divested.[37] In addition, if the registered investment company continues to hold any securities of the divested issuer, it is required to disclose the exchange ticker symbol; CUSIP number; and total number of shares or, for debt securities, principal amount of such securities, held on the date of filing.[38] Compliance with the form amendments is necessary to obtain the benefit of the limitation on civil, criminal, and administrative actions provided in the Sudan Divestment Act. The information provided will not be kept confidential.

B. Reporting and Cost Burden Estimates

The compliance burden estimates for the collections of information are based on several assumptions. The compliance burden for the amendments to Form N-CSR and Form N-SAR will be the reporting burden of collecting information necessary to make the disclosures under new Item 6(b) of Form N-CSR and new Item 133 of Form N-SAR. We estimate that the new collections of information will result in an increase of one-half burden hour per filing. Further, we believe that the number of registered investment companies that hold securities in companies conducting or directly investing in certain business operations in Sudan, and that will divest from these securities in accordance with the Sudan Divestment Act, will be relatively small. We estimate that approximately 15% of all registered investment company portfolios have an objective of investing

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[36] Item 6(b) of Form N-CSR; Item 133 of Form N-SAR.

[37] Item 6(b)(1)-(5) of Form N-CSR; Item 133.A.-E. of Form N-SAR.

[38] Item 6(b)(6) of Form N-CSR; Item 133.F. of Form N-SAR.

internationally.[39] Based on a conservative assumption that each of these portfolios will make a divestment in accordance with the Sudan Divestment Act prior to each filing it makes on Form N-CSR or Form N-SAR, we estimate that approximately 15% of the filings on Form N-CSR and Form N-SAR will include disclosures of divestments in accordance with the Sudan Divestment Act.

Based on a burden hour estimate of one-half hour per filing for each respondent that makes disclosures under the amendments, we estimate that registered management investment companies filing Form N-CSR will incur approximately 510 annual burden hours,[40] and unit investment trusts will incur approximately 10 annual burden hours,[41] to comply with the form amendments.

The total annual burden hours for Form N-CSR, revised to include the burden hours expected from the form amendments, are estimated to be 138,662.5 burden hours, an increase of 510 burden hours from the current annual burden of 138,152.5 hours. The total annual burden hours for Form N-SAR, revised to include the burden hours expected from the form amendments, are estimated to be 107,213 burden hours, an increase of 10 burden hours from the current annual burden of 107,203 hours.

III. COST/BENEFIT ANALYSIS

The Commission is sensitive to the costs and benefits imposed by its rules. Our amendments to Form N-CSR and Form N-SAR require each registered investment

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39 This estimate is based on analysis done by the Division of Investment Management staff of publicly available data.

40 6,743 annual and semi-annual filings on Form N-CSR x 15% of filings on Form N-CSR x ½ burden hour = approximately 510 total burden hours (rounded to the nearest 10).

41 90 filings on Form N-SAR x 15% of filings on Form N-SAR x ½ burden hour = approximately 10 total burden hours (rounded to the nearest 10).

company that divests securities in accordance with the Sudan Divestment Act to disclose the divestment on the next Form N-CSR or Form N-SAR that it files following the divestment. In the release proposing form amendments under the Sudan Divestment Act, we requested comments on our cost/benefit analysis. We received no comments in response.

A. Benefits

In adopting these form amendments, we are implementing the Sudan Divestment Act's mandate for rulemaking by the Commission. The amendments meet the Sudan Divestment Act's directive that the Commission "prescribe regulations, in the public interest and for the protection of investors, to require disclosure by each registered investment company that divests itself of securities in accordance with section 13(c) of the Investment Company Act of 1940."[42] Disclosure under the form amendments will make applicable to a registered investment company, and its employees, officers, directors, and investment advisers, the limitation on actions provided by the Sudan Divestment Act. The amendments also will make important information about divestments in accordance with the Sudan Divestment Act available to investors, including information identifying the securities divested, the dates of divestment, and any securities of the issuer that the registered investment company continues to hold.

B. Costs

While the form amendments may lead to some additional costs for registered investment companies, we believe that these costs should be minimal. We are requiring each registered investment company that divests securities in accordance with the Sudan

42 Section 4(b) of the Sudan Divestment Act.

Divestment Act to disclose the divestment on the next Form N-CSR or Form N-SAR that it files following the divestment. Registered investment companies retain records of securities transactions that, we believe, will permit them to readily identify and disclose, for divestments made in accordance with the Sudan Divestment Act, the securities divested, the dates of divestment, and any securities of the issuer retained by the investment company. Further, to ease the burden of information collection and disclosure, we have included an instruction in Form N-CSR and Form N-SAR stating that a registered investment company that divests securities in accordance with the Sudan Divestment Act during the period that begins on the fifth business day before the date of filing a Form N-CSR or Form N-SAR and ends on the date of filing may disclose the divestment in either that filing or an amendment thereto that is filed not later than five business days after the date of filing the Form N-CSR or Form N-SAR.[43] We believe that this flexibility may lessen the compliance burdens associated with reporting divestments that occur shortly before a registered investment company files a Form N-CSR or Form N-SAR.

For purposes of the PRA, we estimate that it will take approximately 510 annual burden hours[44] to comply with the amendments to Form N-CSR and approximately 10 annual burden hours[45] to comply with the amendments to Form N-SAR, for an aggregate of approximately 520 total annual burden hours to comply with the form amendments. We estimate that this additional burden will equal total costs of approximately $145,000

43 Instruction 2. to Item 6(b) of Form N-CSR; Instructions to Item 133 of Form N-SAR.

44 See supra note 40.

45 See supra note 41.

annually.[46] We believe that the incremental costs of disclosing divestments in accordance with the Sudan Divestment Act on Form N-CSR and Form N-SAR are justified by the fact that such disclosures will make applicable to a registered investment company, and its employees, officers, directors, and investment advisers, the limitation on actions provided by the Sudan Divestment Act. These disclosures also will make important information about divestments in accordance with the Sudan Divestment Act available to investors, including information identifying the securities divested, the dates of divestment, and any securities of the issuer that the registered investment company continues to hold.

IV. CONSIDERATION OF BURDEN ON COMPETITION; PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION

Section 23(a)(2) of the Exchange Act[47] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule will have on competition. Section 23(a)(2) also prohibits us from adopting any rule that will impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, Section 2(c) of the Investment Company Act,[48] Section 2(b) of the

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46 This cost increase is estimated by multiplying the total annual hour burden (520 hours) by the estimated hourly wage rate of $279.50 and rounding to the nearest 1,000. The estimated wage figure is based on published rates for compliance attorneys and senior programmers, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding effective hourly rates of $270 and $289, respectively. See Securities Industry Association, Report on Management & Professional Earnings in the Securities Industry 2007 (Sept. 2007). The estimated wage rate is further based on the estimate that attorneys and programmers would divide time equally, resulting in a weighted wage rate of $279.50 (($270 x .50) + ($289 x .50)).

47 15 U.S.C. 78w(a)(2).

48 15 U.S.C. 80a-2(c).

Securities Act of 1933,[49] and Section 3(f) of the Exchange Act[50] require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. In the release proposing form amendments under the Sudan Divestment Act, we requested comments on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation and whether they would impose a burden on competition. We received no comments in response.

The form amendments implement the Sudan Divestment Act's requirement that we prescribe regulations not later than 120 days after enactment that require disclosure by each registered investment company that divests itself of securities in accordance with the Act. Disclosure provided in response to the amendments will make applicable to a registered investment company, and its employees, officers, directors, and investment advisers, the limitation on actions provided by the Sudan Divestment Act. These disclosures also will make important information about divestments in accordance with the Sudan Divestment Act available to investors, including information identifying the securities divested, the dates of divestment, and any securities of the issuer that the registered investment company continues to hold.

These amendments may improve efficiency. Disclosure provided in response to the amendments could increase efficiency at registered investment companies by making applicable to a registered investment company, and its employees, officers, directors, and

49 15 U.S.C. 77b(b).

50 15 U.S.C. 78c(f).

investment advisers, the limitation on actions provided by the Sudan Divestment Act. These disclosures also could promote efficiency because they make important information about divestments in accordance with the Sudan Divestment Act available to investors, including information identifying the securities divested, the dates of divestment, and any securities of the issuer that the registered investment company continues to hold. Making such information available to investors may enable them to make more informed investment decisions.

The amendments may promote competition. We anticipate that our form amendments may promote competition because they may make it easier for registered investment companies to choose whether or not to offer portfolios that include holdings in companies that conduct or directly invest in certain business operations in Sudan. Thus, the form amendments may facilitate competition by making it easier for registered investment companies to offer different types of portfolios that appeal to different investors. We do not anticipate that the amendments will impose a measurable burden on competition. We also do not anticipate that the form amendments will have a significant impact on capital formation.

V. FINAL REGULATORY FLEXIBILITY ANALYSIS

This Final Regulatory Flexibility Analysis ("Analysis") has been prepared in accordance with the Regulatory Flexibility Act.[51] It relates to the Commission's form amendments under the Exchange Act and the Investment Company Act that require each registered investment company that divests securities in accordance with the Sudan Divestment Act to disclose the divestment on the next Form N-CSR or Form N-SAR that

[51] 5 U.S.C. 601 et seq.

it files following the divestment. We published in the release proposing these amendments an Initial Regulatory Flexibility Analysis ("IRFA"), which we prepared in accordance with the Regulatory Flexibility Act.

A. Need for the Form Amendments

The purpose of the form amendments is to implement the Sudan Divestment Act's requirement that the Commission adopt rules requiring disclosure of divestments made in accordance with the Act. Disclosure provided in response to the amendments will make applicable to a registered investment company, and its employees, officers, directors, and investment advisers, the limitation on actions provided by the Sudan Divestment Act. These disclosures also will make important information about divestments in accordance with the Sudan Divestment Act available to investors, including information identifying the securities divested, the dates of divestment, and any securities of the issuer that the registered investment company continues to hold.

B. Significant Issues Raised by Public Comment

In the IRFA for the proposed amendments, we requested comment on any aspect of the IRFA, including the number of small entities that would be affected by the proposed amendments, the likely impact of the proposal on small entities, the nature of any impact, and providing any empirical data supporting the extent of the impact.[52] We received no comment letters addressing the IRFA.

C. Small Entities Subject to the Rule

The form amendments will affect registered investment companies that are small entities. For purposes of the Regulatory Flexibility Act, an investment company is a

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52 See Proposing Release, supra note 9, 73 FR at 8981.

small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[53] Approximately 160 registered investment companies currently meet this definition.[54]

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The amendments to Form N-CSR and Form N-SAR require each registered investment company that divests securities in accordance with the Sudan Divestment Act to disclose the divestment on the next Form N-CSR or Form N-SAR that it files following the divestment.

For purposes of the PRA, we estimate that it will take approximately 510 annual burden hours to comply with the amendments to Form N-CSR and approximately 10 annual burden hours to comply with the amendments to Form N-SAR, for an aggregate of approximately 520 total annual burden hours to comply with the form amendments. We estimate that this additional burden will equal total costs of approximately $145,000 annually.

E. Agency Action to Minimize the Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small issuers. In connection with the amendments, the Commission considered the following alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

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53 17 CFR 270.0-10.

54 This estimate is based on analysis by the Division of Investment Management staff of publicly available data.

(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the amendments for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the amendments, or any part thereof, for small entities.

The Commission believes that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection or the requirements of the Sudan Divestment Act. Disclosure provided in response to the amendments will make applicable to a registered investment company, and its employees, officers, directors, and investment advisers, the limitation on actions provided by the Sudan Divestment Act. These disclosures also will make important information about divestments in accordance with the Sudan Divestment Act available to investors, including information identifying the securities divested, the dates of divestment, and any securities of the issuer that the registered investment company continues to hold. Different disclosure requirements or different timetables for registered investment companies that are small entities would not be consistent with the requirements of the Sudan Divestment Act. Finally, in this rulemaking, we do not consider using performance rather than design standards to be consistent with the statutory requirement that we adopt rules for the protection of investors.

We have endeavored through the amendments to minimize the regulatory burden on all registered investment companies, including small entities, while meeting the requirements of the Sudan Divestment Act. Small entities should benefit from the Commission's reasoned approach to the amendments to the same degree as other registered investment companies.

VI. STATUTORY AUTHORITY

The Commission is adopting amendments to Form N-SAR and Form N-CSR pursuant to authority set forth in Sections 10(b), 13, 15(d), 23(a), and 36 of the Exchange Act [15 U.S.C. 78j(b), 78m, 78o(d), 78w(a), and 78mm], and Sections 8, 13(c), 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a-8, 80a-13(c), 80a-24(a), 80a-29, and 80a-37].

List of Subjects

17 CFR Part 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

TEXT OF FORM AMENDMENTS

For the reasons set out in the preamble, the Commission amends Title 17, Chapter II, of the Code of Federal Regulations as follows.

PART 249 – FORMS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a et seq., 7202, 7233, 7241, 7262, 7264, and 7265; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

PART 274 – FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

2. The authority citation for Part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-26, and 80a-29, unless otherwise noted.

* * * * *

3. Form N-SAR (referenced in §§ 249.330 and 274.101) is amended by:

a. Revising the reference "132" in Item 6 to read "133";

b. Adding new Item 133;

c. Revising the reference "132" in the fifth paragraph of General Instruction A to read "133"; and

d. Adding an instruction to new Item 133.

The additions read as follows:

Note: The text of Form N-SAR does not, and these amendments will not, appear in the Code of Federal Regulations.

FORM N-SAR

* * * * *

133. If the Registrant has divested itself of securities in accordance with Section 13(c) of the Investment Company Act of 1940 following the filing of its last report on Form N-SAR and before filing of the current report, disclose the following information for each such divested security:

A. Name of the issuer;

B. Exchange ticker symbol;

C. CUSIP number;

D. Total number of shares or, for debt securities, principal amount divested;

E. Date(s) that the securities were divested; and

F. If the Registrant holds any securities of the issuer on the date of filing, the exchange ticker symbol; CUSIP number; and the total number of shares or, for debt securities, principal amount held on the date of filing.

This item 133 shall terminate one year after the date on which the provisions of Section 4 of the Sudan Accountability and Divestment Act of 2007 terminate pursuant to Section 12 of that Act.

* * * * *

Instructions to Specific Items

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ITEM 133: Divestment of Securities in Accordance with the Sudan Accountability and Divestment Act of 2007.

This item may be used by a Registrant that divested itself of securities in accordance with Section 13(c) of the Investment Company Act, which was added by the Sudan Accountability and Divestment Act of 2007. A Registrant is not required to include disclosure under this item; however, the limitation on civil, criminal, and administrative actions under Section 13(c) of the Investment Company Act does not apply with respect to a divestment that is not disclosed under this item.

If a Registrant divests itself of securities in accordance with Section 13(c) of the Act during the period that begins on the fifth business day before the date of filing a Form N-SAR and ends on the date of filing, it may disclose the divestment in either the Form N-SAR or an amendment thereto that is filed not later than five business days after the date of filing the Form N-SAR.

For purposes of determining when a divestment should be reported under this item, if a Registrant divests its holdings in a particular security in a related series of transactions, the Registrant may deem the divestment to occur at the time of the final transaction in the series. In that case, the Registrant should report each transaction in the series on a single Form N-SAR, but should separately state each date on which securities were divested and the total number of shares or, for debt securities, principal amount divested, on each such date.

*   *   *   *   *

4. Form N-CSR (referenced in §§ 249.331 and 274.128) is amended by:

a. Revising the reference "Schedule of Investments." in the caption to Item 6 to read "Investments.";

b. Designating the undesignated paragraph in Item 6 as paragraph (a);

c. Revising the reference "Instruction." in Item 6 to read "Instruction to paragraph (a)."; and

d. Adding new paragraph (b) and new Instructions 1, 2, and 3 to paragraph (b) to Item 6.

The additions read as follows:

Note: The text of Form N-CSR does not, and these amendments will not, appear in the Code of Federal Regulations.

FORM N-CSR

*   *   *   *   *

Item 6. Investments.

(a) *   *   *

(b) If the registrant has divested itself of securities in accordance with Section 13(c) of the Investment Company Act of 1940 following the filing of its last report on Form N-CSR and before filing of the current report, disclose the following information for each such divested security:

(1) Name of the issuer;

(2) Exchange ticker symbol;

(3) Committee on Uniform Securities Identification Procedures ("CUSIP") number;

(4) Total number of shares or, for debt securities, principal amount divested;

(5) Date(s) that the securities were divested; and

(6) If the registrant holds any securities of the issuer on the date of filing, the exchange ticker symbol; CUSIP number; and the total number of shares or, for debt securities, principal amount held on the date of filing.

This Item 6(b) shall terminate one year after the date on which the provisions of Section 4 of the Sudan Accountability and Divestment Act of 2007 terminate pursuant to Section 12 of that Act.

Instructions to paragraph (b).

1. This Item may be used by a registrant that divested itself of securities in accordance with Section 13(c) of the Investment Company Act, which was added by the Sudan Accountability and Divestment Act of 2007. A registrant is not required to include disclosure under this Item; however, the limitation on civil, criminal, and administrative actions under Section 13(c) of the Investment Company Act does not apply with respect to a divestment that is not disclosed under this Item.

2. If a registrant divests itself of securities in accordance with Section 13(c) of the Act during the period that begins on the fifth business day before the date of filing a Form N-CSR and ends on the date of filing, it may disclose the divestment in either the Form N-CSR or an amendment thereto that is filed not later than five business days after the date of filing the Form N-CSR.

3. For purposes of determining when a divestment should be reported under this Item, if a registrant divests its holdings in a particular security in a related series of transactions, the registrant may deem the divestment to occur at the time of the final transaction in the series. In that case, the registrant should report each transaction in the series on a single Form N-CSR, but should separately state each date on which securities were divested and the total number of shares or, for debt securities, principal amount divested, on each such date.

By the Commission.

Nancy M. Morris

Nancy M. Morris
Secretary

April 24, 2008

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2727 / April 24, 2008

INVESTMENT COMPANY ACT OF 1940
Release No. 28253 / April 24, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13019

In the Matter of **Gabelli Funds LLC,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940 AND SECTIONS 9(b) AND 9(f) OF THE INVESTMENT COMPANY ACT OF 1940**

I.

The Securities and Exchange Commission (the "Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (the "Advisers Act"), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (the "Investment Company Act") against Gabelli Funds LLC ("Gabelli Funds" or the "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to

Document 23 of 31

Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (the "Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Overview

This is a proceeding against Gabelli Funds, an investment adviser to mutual funds, based upon its undisclosed market-timing agreement in which it permitted a hedge fund investment manager based in the United Kingdom (the "U.K. hedge fund manager") to market time a mutual fund managed by Gabelli Funds from September 1999 to August 2002 while Gabelli Funds otherwise monitored for and rejected market-timing purchases from other investors of the mutual fund. Approximately six months after the market timing commenced, Gabelli Funds also allowed the U.K. hedge fund manager to increase its market-timing capacity in exchange for the U.K. hedge fund manager's long-term investment in an affiliated hedge fund.

Market timing of mutual funds includes (a) frequent buying and selling of shares of the same mutual fund or (b) buying or selling mutual fund shares in order to exploit inefficiencies in mutual fund pricing. Market timing, while not illegal *per se*, can harm mutual fund shareholders because it can (a) dilute the value of their shares if the market timer is exploiting pricing inefficiencies, (b) disrupt the management of the mutual fund's investment portfolio, and/or (c) cause the targeted mutual fund to incur considerable extra costs associated with the excessive trading which are borne by other shareholders.

From September 1999 until August 2002 (the "relevant period"), Gabelli Funds allowed the U.K. hedge fund manager to market time the Gabelli Global Growth Fund ("GGGF" or "the Fund") on behalf of a hedge fund managed by the U.K. hedge fund manager.[2] In April 2000, Gabelli Funds permitted the U.K. hedge fund manager to increase the amount of money it could use to make market-timing trades in GGGF in exchange for a $1 million investment in the Gabelli Global Partners Fund ("Global Partners Fund"), a hedge fund advised by a Gabelli Funds affiliate. The same portfolio manager managed both GGGF and the Global Partners Fund. Gabelli Funds permitted the U.K. hedge fund manager's market timing even though it was inconsistent with Gabelli Funds' practice, as disclosed to the Gabelli Global Series Board of Directors,[3] of

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1 The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

2 GGGF was called the Gabelli Global Interactive Couch Potato Fund until January 13, 2000 when its name was changed to Gabelli Global Growth Fund. The Fund's name was changed again on November 16, 2005 to GAMCO Global Growth Fund.

3 GGGF is part of the Gabelli Global Series.

monitoring for market timing in its funds and taking steps to stop market timing, including barring market timers.

During the relevant period, the U.K. hedge fund manager executed approximately 399 round-trip market-timing trades in GGGF with an aggregate volume of approximately $4.2 billion, while GGGF's net assets during that period ranged from approximately $100.2 million to $563 million. On 115 days, the accounts managed by the U.K. hedge fund manager had an aggregated investment in GGGF that exceeded three percent of GGGF's total outstanding shares. The frequent trading was detrimental to the long-term shareholders of GGGF. While the U.K. hedge fund manager's three accounts earned internal rates of return from its trading in GGGF of 185 percent, 160 percent, and 73 percent respectively during the relevant period, GGGF had an internal rate of return during the same period of negative 24.1 percent. The U.K. hedge fund manager's trading was so extensive that approximately 62 percent of the total dollar value of all purchases and redemptions in GGGF during the relevant period were short-term trades by the U.K. hedge fund manager.

Gabelli Funds financially benefited from the U.K. hedge fund manager's market timing in that it earned advisory fees from both the market-timing investment in GGGF and the U.K. hedge fund manager's investment in the Global Partners Fund. Gabelli Funds failed to disclose to GGGF's Board of Directors the market-timing arrangement which conflicted with Gabelli Funds' obligation to act in the best interests of GGGF, thereby breaching Gabelli Funds' fiduciary duty to GGGF.

By virtue of its conduct, Gabelli Funds willfully violated Section 206(2) of the Advisers Act, Section 17(d) of the Investment Company Act and Investment Company Act Rule 17d-1, and willfully aided and abetted and caused violations by GGGF of Section 12(d)(1)(B)(i) of the Investment Company Act.

Respondent

1. Gabelli Funds LLC, a New York limited liability company located in Rye, New York, is registered with the Commission as an investment adviser pursuant to Section 203(c) of the Advisers Act. It is the investment adviser to all mutual funds and closed-end funds within the Gabelli complex of funds. As of September 30, 2007, Gabelli Funds had approximately $16.9 billion in assets under management. It is a wholly-owned subsidiary of GAMCO Investors Inc., a New York corporation whose stock trades on the New York Stock Exchange and whose total assets under management exceed $30 billion.

Other Relevant Entities

2. GGGF is an open-end investment company registered under the Investment Company Act. Its primary investment objective was to provide investors with appreciation of capital. During the relevant period, GGGF's prospectus did not explicitly prohibit market timing. Under normal market conditions, the Fund endeavored to invest at least 65 percent of its total assets in common stock of companies involved in

the global marketplace; during the relevant period, it invested approximately 36 to 57 percent of its total assets in non-North American securities. As of December 31, 2007, GGGF had approximately $107.3 million in net assets.

3. The Global Partners Fund is a Cayman Islands Exempted Company incorporated in the Cayman Islands on April 16, 1999. It offers two classes of shares. Each class is issued in series; a new series is issued on each date the fund permits subscriptions for shares. The fund's principal investment objective is to achieve above-average capital growth through investments in securities and other instruments. It is not registered with the Commission as an investment company. Its adviser receives a fixed net asset-based advisory fee set at an annual aggregate rate of 1.5 percent of the fund's average daily net asset value, and a performance based fee set at 20 percent of the appreciation of each series' net asset value each year.

The Market Timing

4. In September 1999, Gabelli Funds allowed the U.K. hedge fund manager to begin making market-timing trades in GGGF. Gabelli Funds permitted the U.K. hedge fund manager to use two accounts to make market-timing trades with up to $5 million at any one time. By early April 2000, Gabelli Funds permitted the U.K. hedge fund manager to increase its investment in GGGF, and the amount with which it made market-timing trades, to $7 million.

5. In April 2000, Gabelli Funds permitted the U.K. hedge fund manager to use a third account to increase its market-timing capacity in GGGF to $20 million, approximately four percent of GGGF's assets at that time. The increased capacity was given in exchange for an investment in Global Partners Fund, an affiliated, newly-formed hedge fund which GGGF's portfolio manager also managed. On April 17, 2000, a trader for the U.K. hedge fund manager confirmed to Gabelli Funds via e-mail that the U.K. hedge fund manager would begin using the increased market-timing capacity on April 24, 2000. The next day, April 18, the U.K. hedge fund manager confirmed by e-mail that it would also make the investment in the Global Partners Fund on April 24, the same day it anticipated it would begin to use the increased market-timing capacity. On April 25, the U.K. hedge fund manager transferred $1 million to Gabelli to fund its investment in the Global Partners Fund effective on May 1.

6. The Global Partners Fund was incorporated in April 1999 and received its first investments in July 1999. As of May 1, 2000, the U.K. hedge fund manager's $1 million investment constituted approximately four percent of the Global Partners Fund's $24.7 million in net assets.

The Market Timing and Its Harm to GGGF Shareholders

7. From April 24, 2000 until the spring of 2002, the U.K. hedge fund manager regularly market timed between $15 million and $20 million in GGGF. During this time period, the assets in the U.K. hedge fund manager's three accounts comprised between four and 15 percent of GGGF's net assets, and the dollar amount of its market-

timing trades accounted for approximately 62 percent of the total dollar value of the trading activity in GGGF.

8. Beginning around December 2000, while the U.K. hedge fund manager was being allowed to market time GGGF, Gabelli Funds began excluding other market timers from the Fund. In rejecting other purchases in GGGF that it identified as market timing, Gabelli Funds relied on the statement in the Gabelli Global Series prospectus, of which GGGF was a part, that "[t]he Funds reserve the right to . . . reject any purchase order if, in the opinion of the Funds' management, it is in the Funds' best interest to do so." Gabelli Funds also informed market timers whose purchases were rejected that "[m]arket timing can negatively affect the mutual fund investment process. Excessive and unpredictable trading hinders a fund manager's ability to pursue the fund's long-term goals. . . . We regret the need to place this restriction, but we feel it is in the best overall interest of the Fund's shareholders."

9. Gabelli Funds had internal procedures designed to identify and prevent market timing whereby its employees routinely reviewed purchases and exchanges in GGGF and rejected purchases or exchanges that appeared to be market timing. However, the U.K. hedge fund manager's three accounts were identified to these employees and they were instructed not to reject purchases or exchanges in these three accounts.

10. The average size of a rejected purchase was approximately $283,000 and Gabelli Funds employees reviewed purchases as small as $100,000. In contrast, the U.K. hedge fund manager was trading between $5 million and $20 million in GGGF on any given day, but its purchases were not rejected by Gabelli Funds.

11. In April 2002, Gabelli Funds' COO unsuccessfully attempted to limit the U.K. hedge fund manager's market-timing investment in GGGF to approximately three percent of GGGF's total outstanding shares. At the time, its market-timing investment in GGGF was more than 10 percent of GGGF's total outstanding shares. The U.K. hedge fund manager's market-timing investment in one of its accounts was reduced, but Gabelli Funds continued to allow the U.K. hedge fund manager to invest and make market-timing trades totaling about 10 percent of GGGF's total outstanding shares, or $16 million.

12. On April 19, 2002, just weeks after Gabelli Funds had limited its market-timing capacity, the U.K. hedge fund manager asked to redeem approximately 50 percent of its $1 million investment in the Global Partners Fund. The redemption occurred on May 1, 2002.

13. On August 7, 2002, Gabelli Funds notified the U.K. hedge fund manager that it had decided to eliminate market timing in its funds and, accordingly, would allow only redemptions in the U.K. hedge fund manager's three accounts. Gabelli Funds also explained that it would not accept trading in an additional account in which the U.K. hedge fund manager sought to market time GGGF. Two weeks later, on August 20, 2002, the U.K. hedge fund manager requested a redemption of its remaining $500,000 investment in the Global Partners Fund.

14. An internal analysis Gabelli Funds prepared around August 15, 2002, showed that the U.K. hedge fund manager's trading had a negative impact on GGGF shareholders. The analysis showed that from January 2002 to August 2002, the U.K. hedge fund manager realized a profit of $2,063,011 resulting in a 13.36 percent return on 33 round trip investments averaging $15.4 million and that this trading diminished GGGF's assets by 1.32 percent. A subsequent analysis found that from late 1999 to August 2002 the U.K. hedge fund manager's internal rates of return from trading in GGGF in its three accounts were, respectively, 185 percent, 160 percent, and 73 percent, while GGGF's internal rate of return was a negative 24.1 percent. The U.K. hedge fund manager's profit over the entire market-timing period was approximately $9.7 million.

Gabelli Funds Failed to Disclose That the U.K. Hedge Fund Manager Market Timed GGGF

15. On February 21, 2001, Gabelli Funds reported to GGGF's Board of Directors that efforts were being made to identify market-timing accounts and restrict them from purchasing the Fund. However, Gabelli Funds did not disclose to the Board that there was an authorized market timer. In fact, while the U.K. hedge fund manager was market timing GGGF, Gabelli Funds did not disclose to GGGF's Board of Directors that the U.K. hedge fund manager was allowed to market time the Fund while other investors were blocked from doing so, that the U.K. hedge fund manager had also made an investment in the Global Partners Fund in exchange for increased timing capacity, or that the U.K. hedge fund manager's market timing had a detrimental impact on GGGF's long-term shareholders.

Violations

16. As a result of the conduct described above, Gabelli Funds willfully[4] violated Section 206(2) of the Advisers Act. Section 206(2) prohibits an investment adviser from engaging in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon clients or prospective clients. Notwithstanding that it had an internal *de facto* policy to reject market-timing purchases in the Global Series funds and that it had told the Board of Directors that it was taking steps to block market timing, Gabelli Funds allowed the U.K. hedge fund manager to market time GGGF and failed to disclose to the Board of Directors the market-timing arrangement with the U.K. hedge fund manager, that the U.K. hedge fund manager's investment in the Global Partners Fund was made in exchange for increased market-timing capacity, or the detrimental effects of the U.K. hedge fund manager's market timing on GGGF shareholders. As a result, Gabelli Funds breached its fiduciary duty and violated Section 206(2).

4 A willful violation of the securities laws means merely "'that the person charged with the violation knows what he is doing.'" *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)).

17. As a result of the conduct described above, Gabelli Funds, an affiliated person of GGGF, willfully violated Section 17(d) of the Investment Company Act and Investment Company Act Rule 17d-1. Section 17(d) prohibits any affiliated person of a registered investment company, acting as principal, to effect any transaction in which such registered investment company is a joint or a joint and several participant with such affiliated person in contravention of such rules and regulations as the Commission may prescribe. Section 17(d) of the Act is intended to limit or prevent participation by such registered company on a basis different from or less advantageous than that of another participant. Rule 17d-1 under the Act prohibits any affiliated person from participating in any joint arrangement unless it obtains an order from the Commission approving the transaction. Gabelli Funds, an affiliated person of GGGF, acting as principal, entered into a joint arrangement with GGGF, without seeking or obtaining approval from the Commission, whereby it permitted the U.K. hedge fund manager to market time GGGF in exchange for an investment in the Global Partners Fund.[5]

18. As a result of the conduct described above, Gabelli Funds willfully aided and abetted and caused repeated violations by GGGF of Section 12(d)(1)(B)(i) of the Investment Company Act, which prohibits any registered investment company from knowingly selling more than three percent of its total outstanding shares to any other investment company.[6] On 115 separate occasions, Gabelli Funds knowingly sold shares to a hedge fund managed by the U.K. hedge fund manager, after which the hedge fund owned more than three percent of the total outstanding shares of GGGF.

19. In determining to accept the Offer, the Commission considered the cooperation afforded the Commission Staff.

Undertakings

20. *Distribution of Disgorgement and Civil Money Penalty.* Respondent has undertaken as follows:

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5 In 1988, Gabelli Funds' predecessor, Gabelli Funds, Inc., and parent company, GAMCO Investors, Inc., consented to an Order Instituting Proceedings Pursuant to Section 15(c) of the Securities Exchange Act of 1934 and Section 9(b) of the Investment Company Act and Findings, Opinion, and Order of the Commission, which, among other things, found Gabelli Funds' predecessor and parent company willfully violated Section 17(d) of the Investment Company Act and Investment Company Act Rule 17(d)-1 by seeking a leveraged buyout transaction with an entity in which certain Gabelli-affiliated investment companies had an investment, and ordered Gabelli Funds' predecessor and parent company to comply with Section 17(d) and Rule 17d-1, retain outside counsel to review their procedures with respect to Section 17(d) and Rule 17d-1, and prepare reports including recommendations to ensure future compliance with Section 17(d) and Rule 17d-1. *In the Matter of The Gabelli Group, Inc., et. al.*, Exchange Act Rel. No. 16527 (Aug. 17, 1988).

6 Section 12(d)(1)(B)(i) of the Investment Company Act applies to the sale of more than three percent of a registered open-end fund's total outstanding voting securities to any investment company, whether registered or unregistered. The provision also applies to issuers relying on an exclusion from the definition of "investment company" pursuant to Section 3(c)(1) and/or Section 3(c)(7).

a. Respondent shall retain, within 60 days of the date of entry of the Order, the services of an Independent Distribution Consultant acceptable to the staff of the Commission and acceptable to the independent directors of GGGF. The Independent Distribution Consultant's compensation and expenses shall be borne exclusively by Respondent, including, but not limited to (i) the compensation of a tax administrator for the preparation of tax returns and/or for seeking any IRS ruling, and (ii) payment of any distribution or consulting services as may be reasonably required by the Independent Distribution Consultant. The payment of taxes, if any, by the Settlement Fund shall be paid from any amounts of disgorgement or penalty paid by the Respondent pursuant to this Order, and any investment returns or interest earned thereon.

b. Respondent shall require the Independent Distribution Consultant to develop a Distribution Plan for the distribution of the payments ordered in paragraph IV.C. of this Order to the shareholders of GGGF to compensate those shareholders fairly and proportionately for the harm caused to them by the market-timing trading activity during the relevant period, according to a methodology developed in consultation with Respondent and the independent directors of GGGF and acceptable to the staff of the Commission. Any residual funds remaining after the shareholders have been fairly and proportionately compensated shall be remitted to the United States Treasury.

c. Respondent shall cooperate fully with the Independent Distribution Consultant and shall provide the Independent Distribution Consultant with access to its files, books, records, and personnel as reasonably requested.

d. Respondent shall require the Independent Distribution Consultant to submit to Respondent and the staff of the Commission the Distribution Plan no more than 120 days after the date of entry of the Order.

e. With respect to any determination or calculation of the Independent Distribution Consultant with which Respondent or the staff of the Commission does not agree, such parties shall attempt in good faith to reach an agreement within 150 days of the date of entry of the Order. In the event that Respondent and the staff of the Commission are unable to agree on an alternative determination or calculation, within 180 days of the date of entry of the Order, they shall each advise, in writing, the Independent Distribution Consultant of any determination or calculation from the Distribution Plan that each considers to be inappropriate and state in writing the reasons for considering such determination or calculation inappropriate.

f. Within 195 days of the date of entry of this Order, Respondent shall require that the Independent Distribution Consultant submit the Distribution Plan for the administration and distribution of disgorgement and penalty funds pursuant to the Commission's Rules of Practice. Following a Commission order approving a final plan of disgorgement, as provided in the Rules of Practice, Respondent shall require that the Independent Distribution Consultant, with Respondent, take all necessary and appropriate steps to administer the final plan for distribution of disgorgement and penalty funds.

g. Respondent shall require the Independent Distribution Consultant to enter into an agreement that provides that, for the period of the engagement and for a period of two years from completion of the engagement, the Independent Distribution Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former subsidiaries, affiliates, trustees, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Distribution Consultant will require that any firm with which the Independent Distribution Consultant is affiliated or of which he or she is a member, and any person engaged to assist the Independent Distribution Consultant in performance of his or her duties under the Order shall not, without prior written consent of the independent directors of Respondent and the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent or any of its present or former subsidiaries, affiliates, trustees, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

h. For good cause shown, the staff of the Commission may alter any of the procedural deadlines set forth above.

21. *Ongoing Cooperation.* Respondent shall cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Order. In connection with such cooperation, Respondent agrees:

a. To produce, without service of a notice or subpoena, any and all non-privileged documents and other information requested by the Commission's staff;

b. To use its best efforts to cause its officers, employees, and directors to be interviewed by the Commission's staff at such time as the staff reasonably may direct;

c. To use its best efforts to cause its officers, employees, and directors to appear and testify without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission's staff; and

d. That in connection with any testimony of Respondent's officers, employees, and directors to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, Respondent:

i. Agrees that any such notice or subpoena for Respondent's officers', employees', and directors' appearance and testimony may be served by regular mail on: Harry J. Weiss, Esq., WilmerHale LLP, 1875 Pennsylvania Avenue, NW, Washington DC 20006, with a copy to Gabelli Funds, LLC, One Corporate Center, Rye, NY 10580, Attn: General Counsel.

ii. Agrees that any such notice or subpoena for Respondent's officers', employees' and directors' appearance and testimony in any action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions specified in Respondent's Offer.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Gabelli Funds LLC is censured.

B. Respondent shall cease and desist from committing or causing any violations and any future violations of Sections 206(2) of the Investment Advisers Act, Section 17(d) of the Investment Company Act and Investment Company Act Rule 17d-1, and Section 12(d)(1)(B)(i) of the Investment Company Act.

C. Respondent shall, within 30 days of the entry of this Order, pay disgorgement of $9,700,000, prejudgment interest of $1,300,000 and a civil money penalty of $5,000,000, for a total payment of $16,000,000 to the Securities and Exchange Commission. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Gabelli Funds LLC as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Christopher Conte, Esq., Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-4631.

D. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, interest, and penalties referenced in paragraph IV.C.

above. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that it shall not, after offset or reduction in any Related Investor Action based on Respondent's payment of disgorgement in this action, argue that it is entitled to, nor shall it further benefit by offset or reduction of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

E. Respondent shall comply with the undertakings enumerated in Paragraph III.20 above.

By the Commission.

Nancy M. Morris
Secretary

J. Lynn Taylor

By: J. Lynn Taylor
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 57709 / April 24, 2008

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2813 / April 24, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-10714

In the Matter of Kevin R. Andersen, CPA	ORDER GRANTING APPLICATION FOR REINSTATEMENT TO APPEAR AND PRACTICE BEFORE THE COMMISSION AS AN ACCOUNTANT RESPONSIBLE FOR THE PREPARATION OR REVIEW OF FINANCIAL STATEMENTS REQUIRED TO BE FILED WITH THE COMMISSION

On March 5, 2002, Kevin R. Andersen, CPA ("Andersen") was denied the privilege of appearing or practicing as an accountant before the Commission as a result of settled public administrative proceedings instituted by the Commission against Andersen pursuant to Rule 102(e) of the Commission's Rules of Practice.[1] Andersen consented to the entry of the order without admitting or denying the facts, findings and conclusions therein. This order is issued in response to Andersen's application for reinstatement to appear and practice before the Commission as an accountant responsible for the preparation or review of financial statements required to be filed with the Commission.

Andersen audited the financial statements of Itex Corporation ("Itex") for the fiscal years ended July 31, 1992 through 1997. Itex filed an amended Form 10-K for the period ended July 31, 1997 which included restated financial statements for the fiscal years ended July 31, 1996 and 1997 and additional restated financial information stretching back to the fiscal year ended July 31, 1993. These restatements were issued due to material misstatements in Itex's financial statements during the relevant time periods. In the course of his audits, the Commission found that Andersen engaged in improper professional conduct. In particular, the Commission found that Andersen violated Statement on Auditing Standards Nos. 1 and 7 because he failed to communicate with Itex's predecessor auditor and failed to exercise professional skepticism in auditing certain of Itex's barter transactions, which resulted in Itex's filing financial statements that failed to comply with Generally Accepted Accounting Principles.

[1] *See* Accounting and Auditing Enforcement Release No. 1510 dated March 5, 2002. Andersen was permitted, pursuant to the order, to apply for reinstatement after three years upon making certain showings.

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In his capacity as a preparer or reviewer, or as a person responsible for the preparation or review, of financial statements of a public company to be filed with the Commission, Andersen attests that he will undertake to have his work reviewed by the independent audit committee of any company for which he works, or in some other manner acceptable to the Commission, while practicing before the Commission in this capacity. Andersen is not, at this time, seeking to appear or practice before the Commission as an independent accountant. If he should wish to resume appearing and practicing before the Commission as an independent accountant, he will be required to submit an application to the Commission showing that he has complied and will comply with the terms of the original suspension order in this regard. Therefore, the denial of Andersen's privilege to practice before the Commission as an independent accountant continues in effect until the Commission determines that a sufficient showing has been made in this regard in accordance with the terms of the original suspension order.

Rule 102(e)(5) of the Commission's Rules of Practice governs applications for reinstatement, and provides that the Commission may reinstate the privilege to appear and practice before the Commission "for good cause shown."[2] This "good cause" determination is necessarily highly fact specific.

On the basis of information supplied, representations made, and undertakings agreed to by Andersen, it appears that he has complied with the terms of the March 5, 2002 order denying his privilege of appearing or practicing before the Commission as an accountant, that no information has come to the attention of the Commission relating to his character, integrity, professional conduct or qualifications to practice before the Commission that would be a basis for adverse action against him pursuant to Rule 102(e) of the Commission's Rules of Practice, and that Andersen, by undertaking to have his work reviewed by the independent audit committee of any company for which he works, or in some other manner acceptable to the Commission, in his practice before the Commission as a preparer or reviewer of financial statements required to be filed with the Commission, has shown good cause for reinstatement. Therefore, it is accordingly,

ORDERED pursuant to Rule 102(e)(5)(i) of the Commission's Rules of Practice that Kevin R. Andersen, CPA is hereby reinstated to appear and practice before the Commission as an accountant responsible for the preparation or review of financial statements required to be filed with the Commission.

By the Commission.

Nancy M. Morris
Secretary

J. Lynn Taylor

By: J. Lynn Taylor
Assistant Secretary

[2] Rule 102(e)(5)(i) provides:

"An application for reinstatement of a person permanently suspended or disqualified under paragraph (e)(1) or (e)(3) of this section may be made at any time, and the applicant may, in the Commission's discretion, be afforded a hearing; however, the suspension or disqualification shall continue unless and until the applicant has been reinstated by the Commission for good cause shown." 17 C.F.R. § 201.102(e)(5)(i).

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Securities Act of 1933
Release No. 8911 / April 24, 2008

Securities Exchange Act of 1934
Release No. 57708 / April 24, 2008

Administrative Proceeding
File No. 3-13019

In the Matter of **GABELLI FUNDS LLC,** **Respondent.**	**ORDER UNDER SECTION 27A(b) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b) OF THE SECURITIES EXCHANGE ACT OF 1934, GRANTING WAIVERS OF THE DISQUALIFICATION PROVISIONS OF SECTION 27A(b)(1)(A)(ii) OF THE SECURITIES ACT OF 1933 AND SECTION 21E(b)(1)(A)(ii) OF THE SECURITIES EXCHANGE ACT OF 1934**

Gabelli Funds, LLC ("Gabelli Funds"), has submitted a letter, dated April 3, 2008, on behalf of itself and its affiliates, including GAMCO Investors Inc., whose stock is traded on the New York Stock Exchange, requesting a waiver of the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act of 1933 ("Securities Act") and Section 21E(b)(1)(A)(ii) of the Securities Exchange Act of 1934 ("Exchange Act") arising from Gabelli Funds' settlement of an administrative proceeding instituted by the Commission.

On April 24, 2008, pursuant to Gabelli Funds' Offer of Settlement, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act") ("Order") against Gabelli Funds. Under the Order, the Commission found that:

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violated Section 206(2) of the Advisers Act.

2. As a result of the conduct described in the Order, Gabelli Funds willfully violated Section 17(d) of the Investment Company Act and Investment Company Act Rule 17d-1.

3. As a result of the conduct described in the Order, Gabelli Funds willfully aided and abetted and caused violations of Section 12(d)(1)(B)(i) of the Investment Company Act.

The order requires, among other things, that Gabelli Funds cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Investment Advisers Act, Sections 12(d)(1)(B)(i) and 17(d) of the Investment Company Act, and Investment Company Act Rule 17d-1.

The safe harbor provisions of Section 27A(c) of the Securities Act and Section 21E(c) of the Exchange Act are not available for any forward looking statement that is "made with respect to the business or operations of an issuer, if the issuer . . . during the 3-year period preceding the date on which the statement was first made . . . has been made the subject of an . . . administrative decree or order arising out of a governmental action that (I) prohibits future violations of the antifraud provisions of the federal securities laws; (II) requires that the issuer cease and desist from violating the antifraud provisions of the securities laws; or (III) determines that the issuer violated the antifraud provisions of the securities laws[.]" 15 U.S.C. § 77z-2(b)(1)(A)(ii); 15 U.S.C. § 78u-5(b)(1)(A)(ii). The disqualifications may be waived "to the extent otherwise specifically provided by rule, regulation, or order of the Commission." 15 U.S.C. § 77z-2(b); 15 U.S.C. § 78u-5(b).

Based on the representations set forth in Gabelli Funds' request, the Commission has determined that, under the circumstances, the request for waiver of the disqualifications resulting from the entry of the Order is appropriate and should be granted.

Accordingly, **IT IS ORDERED**, pursuant to Section 27A(b) of the Securities Act and Section 21E(b) of the Exchange Act, that a waiver from the disqualification provisions of Section 27A(b)(1)(A)(ii) of the Securities Act and Section 21E(b)(1)(A)(ii) of the Exchange Act as to Gabelli Funds and its affiliates resulting from the entry of the Order is hereby granted.

By the Commission.

Nancy M. Morris
Secretary

By: J. Lynn Taylor
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 57722 / April 25, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13021

In the Matter of **AMIR ROSENTHAL, Esq.** **Respondent.**	**ORDER OF SUSPENSION PURSUANT TO RULE 102(e)(2) OF THE COMMISSION'S RULES OF PRACTICE**

I.

The Securities and Exchange Commission deems it appropriate to issue an order of forthwith suspension of Amir Rosenthal pursuant to Rule 102(e)(2) of the Commission's Rules of Practice [17 C.F.R. 200.102(e)(2)].[1]

II.

The Commission finds that:

1. Rosenthal is an attorney admitted to practice in New York.

2. On February 8, 2007, the U.S. Attorney's Office for the Eastern District of New York charged Rosenthal with conspiracy to commit securities fraud by engaging in insider trading; that insider trading is also the subject of a Commission civil action, *SEC v. Aragon Capital Management, LLC, et al.*, 07 Civ. 919 (KMK) (S.D.N.Y.). Simultaneously, Rosenthal pled guilty to one count of felony conspiracy to commit securities fraud in violation of 18 U.S.C. 371.

3. On July 31, 2007, a judgment was entered against Rosenthal sentencing him to 33 months in federal prison followed by 3 years of supervised release, fining him $75,000, and requiring him to perform 300 hours of community service.

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[1]Rule 102(e)(2) provides in pertinent part: "Any ... person who has been convicted of a felony or a misdemeanor involving moral turpitude shall be forthwith suspended from appearing or practicing before the Commission."

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III.

In view of the foregoing, the Commission finds that Rosenthal has been convicted of a felony involving moral turpitude within the meaning of Rule 102(e)(2) of the Commission's Rules of Practice. Accordingly, it is ORDERED, that Amir Rosenthal is forthwith suspended from appearing or practicing before the Commission pursuant to Rule 102(e)(2) of the Commission's Rules of Practice.

By the Commission.

Nancy M. Morris
Secretary

J. Lynn Taylor

By: J. Lynn Taylor
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2728 / April 28, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13023

In the Matter of **ALEXANDER JAMES TRABULSE,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Alexander James Trabulse ("Trabulse" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Advisers Act, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Trabulse founded and controlled Fahey Fund, L.P., Fahey Financial Group, Inc., International Trade & Data, and ITD Trading (collectively, "Fahey Fund"). Trabulse was an investment adviser to Fahey Fund in that, for compensation, he engaged in the business of advising Fahey Fund as to the advisability of investing in, purchasing, or selling securities. Trabulse, age 60 years old, resides in Daily City, California. He is not currently registered, nor was he ever registered, with the Commission.

2. On April 7, 2008, a final judgment was entered by consent against Trabulse, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, in the civil action entitled Securities and Exchange Commission v. Alexander James Trabulse, et al., Civil Action Number C-07-4975 WHA, in the United States District Court for the Northern District of California.

3. The Commission's complaint alleged that Trabulse defrauded investors in Fahey Fund by falsifying investor account statements to the make the fund look more profitable than it actually was, to solicit new investments in Fahey Fund, and to convince existing investors to put additional money into the fund. The Commission's complaint further alleged that Trabulse misappropriated fund assets by taking for personal use assets to which Respondent was not entitled.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Trabulse's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 203(f) of the Advisers Act, that Respondent Trabulse be, and hereby is barred from association with any investment adviser, with the right to reapply for association after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission;

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a

customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Nancy M. Morris
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 57728 / April 28, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13025

In the Matter of RYAN G. LEEDS, Respondent.	ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Ryan G. Leeds ("Leeds" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") that the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

A. Respondent

Ryan G. Leeds, age 35, resides in Boca Raton, Florida, and was a registered representative associated with broker-dealer vFinance Investments, Inc. ("vFinance") during the relevant period. He is currently employed as a registered representative with another broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act.

B. Other Relevant Entity

vFinance is a registered broker-dealer with its principal place of business in Boca Raton, Florida and offices of supervisory jurisdiction in New York, New Jersey, and Florida. It is a wholly-owned subsidiary of vFinance, Inc., a Delaware corporation whose stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act. During the relevant period, vFinance conducted a general securities business through its registered representatives and traders.

C. Summary

From September 2002 through June 2003, Leeds violated Section 5 of the Securities Act when he engaged in the illegal distribution of the securities of SHEP Technologies, Inc. ("SHEP") and Sedona Software Solutions, Inc. ("Sedona") by offering and selling restricted shares of the two issuers through the Over-the-Counter Bulletin Board ("OTCBB"). No registration statement was in effect as to those offers and sales, and no valid exemptions from registration were applicable to them. Sedona and SHEP were thinly-traded issuers at the time of the illegal distributions, and had little or no operations or assets. Prior to offering and selling the Sedona and SHEP securities, Leeds failed to conduct a reasonable inquiry regarding these securities to determine whether vFinance's customer was an underwriter or was otherwise engaged in an illegal distribution of securities.

D. Facts

1. Unregistered Sales of Sedona Stock

In January 2003, Sedona was a shell company with no assets and no operations, whose stock was quoted on the OTCBB. Two brothers who were principals of a Bermuda securities firm (the "Bermuda principals" and the "Bermuda firm," respectively) owned approximately ninety-nine percent of Sedona's outstanding shares. All of the Sedona shares owned by the

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[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Bermuda principals were restricted because they had purchased the Sedona shares from affiliates of Sedona in an unregistered transaction. Upon acquiring their ninety-nine percent interest, the Bermuda principals became control persons and affiliates of Sedona themselves. The Bermuda firm was a vFinance customer, and Leeds was the Bermuda firm's account representative.

Prior to January 2003, Sedona shares had been quoted at approximately $.03 per share, and had last traded in May 2002 at that price. On January 16, 2003, Leeds caused vFinance to register as a market maker in Sedona stock. On the morning of January 21, 2003, Sedona issued a press release announcing a reverse merger with Renaissance Mining Corp., a privately-held company. The Bermuda firm's investment banking affiliate was named in the press release as the underwriter of a $6 million private placement of Renaissance shares. The press release did not disclose that the Bermuda principals owned the Sedona shell.

Also on the morning of January 21, prior to the market open, the Bermuda principals placed an order with Leeds to sell 20,000 shares of Sedona stock at $9 per share. This sell order was unusual because, prior to the order, there had been no trading volume in Sedona stock for seven months and Sedona stock had never traded for more than pennies per share.

From January 21 through January 29, 2003, Leeds sold approximately 106,000 shares of restricted Sedona stock into the U.S. market through the OTCBB on behalf of the Bermuda firm and its principals. All of these sales were made without a registration statement in effect, and with no valid exemptions from registration.

Despite several red flags – among them, that the Bermuda firm had a large block of Sedona securities to sell, that the stock had not traded for seven months, and that, prior to January 21, the stock had traded for only pennies per share, but was being offered for sale on that day at $9 per share – Leeds did not conduct a reasonable inquiry into the origin and ownership of the Sedona shares before he offered and sold them on behalf of the Bermuda firm and its principals. Leeds made no attempt to discover whether he was selling the Sedona shares on behalf of an underwriter, or was otherwise engaged in an illegal distribution of Sedona securities. Leeds also made no attempt to determine whether a valid registration statement was in effect for the Bermuda firm's sale of Sedona shares.

On January 29, 2003, the Commission suspended trading in Sedona securities for ten days because of questions concerning the accuracy and completeness of information about Sedona on Internet websites, in press releases, and in other sources publicly available to investors concerning, among other things, Sedona's announced merger with Renaissance, the assets and business operations of Renaissance, and the trading in Sedona stock in connection with the announced merger.

2. Unregistered Sales of SHEP Stock

From September 2002 through June 2003, Leeds engaged in an illegal distribution of the securities of SHEP when he offered and sold approximately three million shares of restricted SHEP stock through the OTCBB on behalf of the Bermuda firm, its principals, and two of its customers.

At the start of these sales in September 2002, the Bermuda principals and two of their clients (the "SHEP group") owned approximately ninety percent of SHEP's (or its predecessor's) outstanding shares, which they had purchased from affiliates of SHEP or its predecessor. As a result, all of those shares were restricted. Upon acquiring those shares, the members of the SHEP group became control persons and affiliates of SHEP themselves. All of Leeds's offers and sales of these SHEP shares were made without a registration statement in effect, and with no valid exemptions from registration.

As with Sedona, Leeds did not conduct a reasonable inquiry or any due diligence concerning the origin and ownership of the SHEP shares. Leeds made no attempt to discover whether he was selling the SHEP shares on behalf of an underwriter, or was otherwise engaged in an illegal distribution of SHEP securities. Leeds also made no attempt to determine whether a valid registration statement was in effect for the Bermuda firm's sale of SHEP shares.

E. Violations

Section 5(a) of the Securities Act provides that, unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly, to sell or deliver the security after sale through the use of any means or instrumentality of transportation or communication in interstate commerce or of the mails. Section 5(c) of the Securities Act contains similar prohibitions as to offers to sell a security unless a registration statement has been filed with the Commission.

The Commission has made clear in guidance regarding sales of unregistered securities by broker-dealers that:

> "when a dealer is offered a substantial block of a little-known security… where the surrounding circumstances raise a question as to whether or not the ostensible sellers may be merely intermediaries for controlling persons or statutory underwriters, then searching inquiry is called for. The problem becomes particularly acute where substantial amounts of a previously little known security appear in the trading markets within a fairly short period of time and without the benefit of registration under the Securities Act of 1933. In such situations, it must be assumed that these securities emanate from the issuer or from persons controlling the issuer, unless some other source is known…."

Distribution by Broker-Dealers of Unregistered Securities, 27 Fed. Reg. 1415, Securities Act Rel. No. 4445, Exchange Act Rel. No. 6721 (Feb. 2, 1962), *cited in In the Matter of Terry T. Steen*, 53 S.E.C. 618, 620 (June 1, 1998). The Commission has also previously held that "in light of the cardinal role occupied by broker-dealers in the securities distribution process, we cannot overemphasize the importance of their obligation to take all reasonable steps to avoid participation in distributions violative of the registration .... provisions of the Securities Act." *In the Matter of Jacob Wonsover*, 54 S.E.C. 1, 33 (Mar. 1, 1999) (quoting *In the Matter of L.A. Frances, Ltd.*, 44 S.E.C. 588, 593 (June 22, 1971)), *petition for review denied, Wonsover v. SEC*, 205 F.3d 408 (D.C. Cir. 2000).

As a result of his conduct with regard to Sedona and SHEP described above, Leeds willfully violated Section 5 of the Securities Act.[2]

F. <u>Undertakings</u>

Respondent has undertaken to, in connection with this action and any related judicial or administrative proceeding commenced by the Commission or to which the Commission is a party: (i) agree to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials; (iii) appoint his undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waive the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the Respondent's travel, lodging, and subsistence expenses will be reimbursed at the then-prevailing U.S. Government per diem rates; (v) consent to personal jurisdiction over him in any United States District Court for purposes of enforcing any such subpoena; and (vi) consent to the production by any third party of any documents, records, or other information in the third party's possession, custody, or control that the Commission seeks from the third party, by subpoena or otherwise. In connection with these Undertakings, Respondent is not waiving any applicable rights under the Fifth Amendment to the U.S. Constitution.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Leeds's Offer.

Accordingly, pursuant to Section 8A of the Securities Act and Section 15(b)(6) of the Exchange Act, it is hereby ORDERED that:

[2] "Willfully" as used in this Order means intentionally committing the act which constitutes the violation. *Cf. Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000); *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

A. Respondent Leeds cease and desist from committing or causing any violations and any future violations of Section 5 of the Securities Act;

B. Respondent Leeds be, and hereby is, suspended from association with any broker or dealer for a period of ninety (90) days, effective on the second Monday following the entry of this Order;

C. Respondent Leeds shall, within ten (10) days of the entry of this Order, pay disgorgement in the amount of $19,787 and prejudgment interest of $6,772 to the Securities and Exchange Commission. Such payment shall be: (1) made by United States postal money order, certified check, bank cashier's check, or bank money order; (2) made payable to the "Securities and Exchange Commission"; (3) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (4) submitted under cover letter that identifies Leeds as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Room 8519, Washington, DC 20549-8549;

D. Respondent Leeds shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $6,500 to the Securities and Exchange Commission. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the "Securities and Exchange Commission"; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Leeds as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Room 8519, Washington, DC 20549-8549; and

E. Respondent Leeds shall comply with his undertakings enumerated in Section III. F., above.

By the Commission.

Nancy M. Morris

Nancy M. Morris
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 57727 / April 28, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13024

In the Matter of VFINANCE INVESTMENTS, INC., Respondent.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against vFinance Investments, Inc. ("vFinance" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") that the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

A. Respondent

vFinance is a broker-dealer with its principal place of business in Boca Raton, Florida and offices of supervisory jurisdiction in New York, New Jersey, and Florida. It is a wholly-owned subsidiary of vFinance, Inc., a Delaware public corporation that files periodic reports with the Commission. vFinance is a member of FINRA. During the relevant period, vFinance conducted an investment advisory and general securities business through its registered representatives and traders.

B. Summary

From September 2002 through June 2003, a registered representative then associated with vFinance violated Section 5 of the Securities Act of 1933 ("Securities Act") when he engaged in the illegal distribution of the securities of SHEP Technologies, Inc. ("SHEP") and Sedona Software Solutions, Inc. ("Sedona") by offering and selling restricted shares of the two issuers through the Over-the-Counter Bulletin Board ("OTCBB"). No registration statement was in effect as to those offers and sales, and no valid exemptions from registration were applicable to them. Sedona and SHEP were thinly-traded issuers at the time of the illegal distributions, and had little or no operations or assets. Prior to offering and selling the Sedona and SHEP securities, the registered representative failed to conduct a reasonable inquiry regarding these securities to determine whether vFinance's customer was an underwriter or was otherwise engaged in an illegal distribution of securities.

vFinance failed reasonably to supervise its registered representative's conduct with a view to preventing and detecting his Section 5 violations. vFinance had inadequate procedures in place during the relevant period to require that its registered representative conduct the appropriate due diligence concerning the origin and ownership of thinly-traded securities that vFinance offered and sold on behalf of its customers. vFinance also did not establish reasonable procedures or systems for training its registered representative with regard to compliance with the registration provisions of the Securities Act.

C. Facts

1. Unregistered Sales of Sedona Stock

In January 2003, Sedona was a shell company with no assets and no operations, whose stock was quoted on the OTCBB. Two brothers who were principals of a Bermuda securities firm (the "Bermuda principals" and the "Bermuda firm," respectively) owned approximately

[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

ninety-nine percent of Sedona's outstanding shares. All of the Sedona shares owned by the Bermuda principals were restricted because the brothers had purchased the Sedona shares from affiliates of Sedona in an unregistered transaction. Upon acquiring their ninety-nine percent interest, the Bermuda principals became control persons and affiliates of Sedona themselves. The Bermuda firm was a vFinance customer, and the vFinance registered representative was its account representative.

Prior to January 2003, Sedona shares had been quoted at approximately $.03 per share, and had last traded in May 2002 at that price. On January 16, 2003, the registered representative caused vFinance to register as a market maker in Sedona stock. On the morning of January 21, 2003, Sedona issued a press release announcing a reverse merger with Renaissance Mining Corp., a privately-held company. The Bermuda firm's investment banking affiliate was named in the press release as the underwriter of a $6 million private placement of Renaissance shares. The press release did not disclose that the Bermuda principals owned the Sedona shell.

Also on the morning of January 21, prior to the market open, the Bermuda principals placed an order with the vFinance registered representative to sell 20,000 shares of Sedona stock at $9 per share. This sell order was unusual because, prior to the order, there had been no trading volume in Sedona stock for seven months and Sedona stock had never traded for more than pennies per share.

Despite the existence of several red flags – among them, that the Bermuda firm suddenly had a large block of Sedona securities to sell, that the stock had not traded for seven months, and that, prior to January 21, the stock had traded for only pennies per share, but was being offered for sale on that day at $9 per share – the vFinance registered representative did not conduct a reasonable inquiry, or any due diligence, into the origin and ownership of the Sedona shares before he offered and sold them on behalf of the Bermuda firm and its principals. The vFinance registered representative made no attempt to determine whether a valid registration statement was in effect for the Bermuda firm's sales of Sedona shares. The vFinance registered representative also made no attempt to discover whether the Bermuda principals were acting as underwriters engaged in an illegal distribution of Sedona securities when he offered and sold the Sedona shares on their behalf.

Sedona shares traded in the $8 - $9 range for the remainder of the day on January 21, on record volume of over 300,000 shares, raising Sedona's market capitalization to over $45 million. On that day, the vFinance registered representative offered and sold 70,000 restricted Sedona shares through the U.S. market, or approximately twenty-two percent of Sedona's total daily volume, on behalf of the Bermuda firm and its principals.

From January 22 through January 29, 2003, the vFinance registered representative sold approximately 36,000 shares of restricted Sedona stock into the U.S. market through the OTCBB on behalf of the Bermuda firm and its principals. Altogether, the vFinance registered representative sold approximately 106,000 restricted Sedona shares through the OTCBB on behalf of the Bermuda firm and its principals. All of these sales were made without a registration statement in effect, and with no valid exemptions from registration.

On January 29, 2003, the Commission suspended trading in Sedona securities for ten days because of questions concerning the accuracy and completeness of information about Sedona on Internet websites, in press releases, and in other sources publicly available to investors concerning, among other things, Sedona's announced merger with Renaissance, the assets and business operations of Renaissance, and the trading in Sedona stock in connection with the announced merger.

2. Unregistered Sales of SHEP Stock

From September 2002 through June 2003, the same vFinance registered representative engaged in an illegal distribution of the securities of SHEP when he offered and sold approximately three million shares of restricted SHEP stock through the OTCBB on behalf of the Bermuda firm, its principals, and two of its customers. SHEP stock was quoted on the OTCBB at all relevant times.

At the start of these sales in September 2002, the Bermuda principals and two of their clients (the "SHEP group") owned approximately ninety percent of SHEP's (or its predecessor's) outstanding shares, which they had purchased from affiliates of SHEP or its predecessor. As a result, all of those shares were restricted. Upon acquiring those shares, the members of the SHEP group became control persons and affiliates of SHEP themselves. All of vFinance's offers and sales of these SHEP shares were made without a registration statement in effect, and with no valid exemptions from registration.

As with Sedona, the vFinance registered representative did not conduct a reasonable inquiry or any due diligence concerning the origin and ownership of the SHEP shares. The vFinance registered representative made no attempt to discover whether he was selling the SHEP shares on behalf of an underwriter, or was otherwise engaged in an illegal distribution of SHEP securities. The vFinance registered representative also made no attempt to determine whether a valid registration statement was in effect for the Bermuda firm's sale of SHEP shares.

As a result of his conduct with regard to Sedona and SHEP described above, the vFinance registered representative violated Section 5 of the Securities Act, which prohibits the offer or sale of securities, through the means or instruments of transportation or communication in interstate commerce or of the mails, without a registration statement in effect.

3. vFinance Failed Reasonably to Supervise its Registered Representative

During the period from September 2002 through June 2003, vFinance did not establish reasonable procedures for conducting due diligence in connection with offering or selling substantial blocks of thinly-traded securities on behalf of customers. vFinance also did not establish reasonable procedures or systems regarding compliance with Section 5, including training its registered representative with respect to engaging in distributions of securities into the U.S. public markets. By not having such procedures or systems in place, vFinance failed reasonably to supervise its registered representative in order to prevent and detect the registered representative's participation in illegal distributions of securities.

vFinance had inadequate procedures in place to ensure that its registered representative performed due diligence with regard to thinly-traded securities prior to offering or selling such securities into the U.S. public markets on behalf of customers. For example, under Securities Act Rule 144(g)(3), such reasonable inquiry "should include, but not necessarily be limited to, inquiry as to the following matters: (a) The length of time the securities have been held by the [customer] . . . ; (b) The nature of the transaction in which the securities were acquired by [the customer]; (c) The amount of securities of the same class sold during the past three months by [the customer]; (d) Whether [the customer] intends to sell additional securities of the same class through any other means; (e) Whether [the customer] has solicited or made any arrangement for the solicitation of buy orders in connection with the proposed sale of securities; (f) Whether [the customer] has made any payment to any other person in connection with the proposed sale of the securities; and (g) The number of shares or other units of the class outstanding, or the relevant trading volume."

vFinance also did not establish reasonable systems to train its registered representative with regard to compliance with the Securities Act registration provisions. The registered representative, for example, had not been trained to recognize the red flags raised by the circumstances surrounding the sales of the SHEP and Sedona shares. These red flags should have alerted the registered representative to conduct a thorough inquiry into the ownership and origin of the shares to assess whether he was engaging in an unlawful distribution when he offered and sold the shares on behalf of the Bermuda firm and its principals. However, vFinance had not trained the registered representative with regard to Section 5 compliance, and failed to establish and enforce reasonable procedures to require the registered representative to conduct a reasonable inquiry of the type described above. If vFinance had developed reasonable procedures and systems for Section 5 compliance, it is likely that the firm would have prevented and detected the registered representative's Section 5 violations.

D. Violations

Section 15(b)(4)(E) of the Exchange Act provides that the Commission may sanction a broker or dealer who "has failed reasonably to supervise, with a view to preventing violations of the securities laws, another person who commits such a violation, if such other person is subject to [its] supervision." *In the Matter of Robertson Stephens, Inc.,* Exchange Act Rel. No. 47144, Admin. Proc. File No. 3-11003 (Jan. 9, 2003). "The Commission has repeatedly emphasized that the duty to supervise is a critical component of the federal regulatory scheme." *In the Matter of Oechsle International Advisors, LLC*, Advisers Act Rel. No. 1966, Admin. Proc. File No. 3-10554, 2001 S.E.C. LEXIS 1619, at *11 (Aug. 10, 2001).

Section 15(b)(4)(E) provides that a broker-dealer may discharge this responsibility by having "established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect" such violations. "Where there has been an underlying violation of the federal securities laws, the failure to have or follow compliance procedures has frequently been found to evidence a failure reasonably to supervise the primary violator." *In the Matter of William V. Giordano*, Exchange Act Rel. No. 36742, Admin. Proc. File No. 3-8933, 1996 S.E.C. LEXIS 71, at *11 (Jan. 19, 1996).

With regard to the vFinance registered representative's Section 5 violations, the Commission has made clear in guidance regarding sales of unregistered securities by broker-dealers that:

> "when a dealer is offered a substantial block of a little-known security... where the surrounding circumstances raise a question as to whether or not the ostensible sellers may be merely intermediaries for controlling persons or statutory underwriters, then searching inquiry is called for. The problem becomes particularly acute where substantial amounts of a previously little known security appear in the trading markets within a fairly short period of time and without the benefit of registration under the Securities Act of 1933. In such situations, it must be assumed that these securities emanate from the issuer or from persons controlling the issuer, unless some other source is known...."

Distribution by Broker-Dealers of Unregistered Securities, 27 Fed. Reg. 1415, Securities Act Rel. No. 4445, Exchange Act Rel. No. 6721 (Feb. 2, 1962), *cited in In the Matter of Terry T. Steen*, 53 S.E.C. 618, 620 (June 1, 1998). The Commission has also previously held that "in light of the cardinal role occupied by broker-dealers in the securities distribution process, we cannot overemphasize the importance of their obligation to take all reasonable steps to avoid participation in distributions violative of the registration ... provisions of the Securities Act." *In the Matter of Jacob Wonsover*, 54 S.E.C. 1, 33 (Mar. 1, 1999) (quoting *In the Matter of L.A. Frances, Ltd.*, 44 S.E.C. 588, 593 (June 22, 1971)), *petition for review denied*, *Wonsover v. SEC*, 205 F.3d 408 (D.C. Cir. 2000).

As a result of the conduct described above, vFinance failed reasonably to supervise its brokers with a view to preventing and detecting the registered representative's violations of Section 5 of the Securities Act.

E. Undertakings

1. Respondent has undertaken to:

a. Retain, within forty-five (45) days of the date of this Order, at vFinance's expense, an Independent Consultant, not unacceptable to the Commission's staff, to conduct a review of vFinance's existing procedures regarding its compliance with Section 5 of the Securities Act. The Independent Consultant will review whether the procedures have been effectively implemented, maintained, and followed. The Independent Consultant also will recommend such other procedures (or amendments to existing procedures), if any, as are necessary and appropriate to prevent and detect violative activity by traders and registered representatives. The Independent Consultant will submit, within 120 days of the date of this

Order, to vFinance and the Commission's staff, a written report (the "Initial Report") describing the review performed, his or her findings, and any recommendations;

b. Adopt and implement, within 150 days of the date of this Order, at vFinance's expense, such procedures recommended by the Independent Consultant in the Initial Report, except as set forth in Section III.E., paragraph 1.c., below;

c. Advise in writing, within 150 days of the date of this Order, the Independent Consultant and the Commission's staff, of the recommendations from the Initial Report it considers unnecessary or inappropriate, if any. vFinance shall propose an alternative procedure, designed to accomplish the same objective, for any procedure to which it objects. The Independent Consultant will evaluate reasonably such alternative procedure and, if appropriate, either approve the alternative procedure or amend his or her recommendation. The Independent Consultant will submit, within 180 days of the date of this Order, to vFinance and to the Commission's staff, a written report identifying the alternative procedures or amended recommendations, if any, of which he or she approves, the reasons for the Independent Consultant's decision, and the time period within which vFinance will adopt and implement them (the "Supplemental Report"). vFinance will abide by the decision of the Independent Consultant;

d. Cooperate fully with the Independent Consultant, including obtaining the cooperation of vFinance employees or other persons under vFinance's control;

e. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from the completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing, or other professional relationship with vFinance, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Commission's staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with vFinance, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

2. Respondent has also undertaken to, in connection with this action and any related judicial or administrative proceeding commenced by the Commission or to which the Commission is a party: (i) agree to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials; (iii) appoint Respondent's undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waive the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony

reimburses Respondent's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; (v) consent to personal jurisdiction over Respondent in any United States District Court for purposes of enforcing any such subpoena; and (vi) consent to the production by any third party of any documents, records, or other information in the third party's possession, custody, or control that the Commission seeks from the third party, by subpoena or otherwise.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent vFinance's Offer.

Accordingly, pursuant to Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent vFinance be, and hereby is, censured pursuant to Section 15(b)(4) of the Exchange Act;

B. Respondent shall, within ten (10) days of the entry of this Order, pay disgorgement in the amount of $19,787 and prejudgment interest of $6,772 to the Securities and Exchange Commission. Such payment shall be (1) made by United States postal money order, certified check, bank cashier's check, or bank money order; (2) made payable to the "Securities and Exchange Commission"; (3) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (4) submitted under cover letter that identifies vFinance Investments, Inc. as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Antonia Chion, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Room 8519, Washington, DC 20549-8549; and

C. Respondent vFinance shall comply with its undertakings enumerated in Section III.E., paragraphs 1 and 2, above.

By the Commission.

Nancy M. Morris
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 57224 / April 28, 2008

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2814 / April 28, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-8967

In the Matter of Calvin Kirk French, CPA	ORDER GRANTING APPLICATION FOR REINSTATEMENT TO APPEAR AND PRACTICE BEFORE THE COMMISSION AS AN ACCOUNTANT RESPONSIBLE FOR THE PREPARATION OR REVIEW OF FINANCIAL STATEMENTS REQUIRED TO BE FILED WITH THE COMMISSION

On March 5, 1996, Calvin Kirk French, CPA ("French") was denied the privilege of appearing or practicing as an accountant before the Commission as a result of settled public administrative proceedings instituted by the Commission against him pursuant to Rule 102(e) of the Commission's Rules of Practice.[1] French consented to the entry of the order without admitting or denying the findings therein. This order is issued in response to French's application for reinstatement to appear and practice before the Commission as an accountant responsible for the preparation or review of financial statements required to be filed with the Commission.

During 1989 and 1990 Chambers Development Company, Inc. ("Chambers") understated its expenses and overstated its earnings by engaging in certain fraudulent capitalization practices in violation of GAAP. French served as the audit manager and engagement administrator for audit of Chambers's 1989 financial statements by Grant Thornton LLP. He served as the senior manager for the audit of Chambers's 1990 financial statements. With respect to these audits, the Commission found that French engaged in improper professional conduct within the meaning of Rule 102(e) by failing to conduct them in accordance with GAAS. French failed to obtain sufficient competent evidential matter to afford a reasonable basis for Grant Thornton's opinion on Chambers's financial statements, failed to assess properly whether the company's financial statements were fairly presented in accordance with GAAP, and failed to exercise due professional care in the performance of the audit.

[1] *See* Accounting and Auditing Enforcement Release No. 767 dated March 5, 1996. French was permitted, pursuant to the order, to apply for reinstatement after 18 months upon making certain showings.

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In his capacity as a preparer or reviewer, or as a person responsible for the preparation or review, of financial statements of a public company to be filed with the Commission, French attests that he will undertake to have his work reviewed by the independent audit committee of any company for which he works, or in some other manner acceptable to the Commission, while practicing before the Commission in this capacity. French is not, at this time, seeking to appear or practice before the Commission as an independent accountant. If he should wish to resume appearing and practicing before the Commission as an independent accountant, he will be required to submit an application to the Commission showing that he has complied and will comply with the terms of the original order in this regard. Therefore, the denial of French's privilege of appearing and practicing before the Commission as an independent accountant continues in effect until the Commission determines that a sufficient showing has been made in this regard in accordance with the terms of the original order.

Rule 102(e)(5) of the Commission's Rules of Practice governs applications for reinstatement, and provides that the Commission may reinstate the privilege to appear and practice before the Commission "for good cause shown."[2] This "good cause" determination is necessarily highly fact specific.

On the basis of information supplied, representations made, and undertakings agreed to by French, it appears that he has complied with the terms of the March 5, 1996 order denying him the privilege of appearing or practicing before the Commission as an accountant, that no information has come to the attention of the Commission relating to his character, integrity, professional conduct or qualifications to practice before the Commission that would be a basis for adverse action against him pursuant to Rule 102(e) of the Commission's Rules of Practice, and that French, by undertaking to have his work reviewed by the independent audit committee of any company for which he works, or in some other manner acceptable to the Commission, in his practice before the Commission as a preparer or reviewer of financial statements required to be filed with the Commission, has shown good cause for reinstatement. Therefore, it is accordingly,

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[2] Rule 102(e)(5)(i) provides:

"An application for reinstatement of a person permanently suspended or disqualified under paragraph (e)(1) or (e)(3) of this section may be made at any time, and the applicant may, in the Commission's discretion, be afforded a hearing; however, the suspension or disqualification shall continue unless and until the applicant has been reinstated by the Commission for good cause shown." 17 C.F.R. § 201.102(e)(5)(i).

ORDERED pursuant to Rule 102(e)(5)(i) of the Commission's Rules of Practice that Calvin Kirk French, CPA is hereby reinstated to appear and practice before the Commission as an accountant responsible for the preparation or review of financial statements required to be filed with the Commission.

By the Commission.

Nancy M. Morris
Secretary

J. Lynn Taylor

By: J. Lynn Taylor
Assistant Secretary

SERVICE LIST

Calvin Kirk French
444 Sulgrave Road
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412-481-0871 Home
412-330-7790 Cell

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8912 / April 28, 2008

SECURITIES EXCHANGE ACT OF 1934
Release No. 57725 / April 28, 2008

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2815 / April 28, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-10998

In the Matter of **ROBERT A. PUTNAM, CPA,** **Respondent.**	**ORDER MAKING FINDINGS, IMPOSING A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, AND IMPOSING REMEDIAL SANCTIONS PURSUANT TO RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE**

I.

On December 23, 2002, the Securities and Exchange Commission ("Commission") instituted public administrative and cease-and-desist proceedings pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(1) of the Commission's Rules of Practice against Robert A. Putnam ("Putnam" or "Respondent").[1]

[1] Paragraph 1 of Rule 102(e) provides, in relevant part, that: The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice and opportunity for hearing in the matter: . . . (ii) [t]o be lacking in character or integrity or to have engaged in unethical or improper professional conduct.

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Following the institution of those proceedings, Putnam submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceeding brought by or on behalf of the Commission or in which the Commission is a party, Putnam consents to the entry of this Order Making Findings, Imposing A Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933, and Imposing Remedial Sanctions Pursuant to Rule 102(e) of the Commission's Rules of Practice ("Order") without admitting or denying the findings set forth in this Order, except as to the jurisdiction of the Commission over him and over the subject matter of these proceedings, which are admitted.

The Commission has determined that it is appropriate to accept Putnam's Offer and accordingly is issuing this Order.

II.

On the basis of this Order and Respondent's Offer, the Commission finds[2] that:

III.

Respondent

1. Robert A. Putnam, age 53, is a resident of Duluth, Georgia, and was a certified public accountant licensed in the State of Georgia from 1984 until December 31, 2002, when his license expired and he did not renew it. From 1984 to 2002, Putnam worked in the Atlanta, Georgia, office of Arthur Andersen LLP ("Andersen"), a national public accounting firm. At all times relevant to this proceeding, Andersen was a member of the SEC Practice Section of the American Institute of Certified Public Accountants. During all of the events described below, Putnam was a partner in the firm. From September 1996 through July 1999, Putnam served as the audit engagement partner for Andersen's audit and quarterly reviews of HBO and Company, Inc. ("HBOC"), an Atlanta-based maker of software for the healthcare industry. Putnam also served as the audit engagement partner for Andersen's audit of ebix.com, inc. ("Ebix"),[3] a Chicago-based maker of software for the insurance industry.

Nature of Proceeding

2. This matter involves Putnam's conduct while performing accounting services, including auditing services, for both HBOC and Ebix. In both matters Putnam failed to exercise

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[2] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

[3] At the time of the conduct at issue here, Ebix was known as Delphi Information Systems, Inc. In September 1999, the company changed its name to "ebix.com, Inc." For the purposes of this Order Instituting Proceedings, the company is referred to as Ebix.

due professional care in the performance of the audits, failed to adequately plan and supervise the audits, and failed to obtain sufficient competent evidential matter to afford a reasonable basis for an opinion regarding the financial statements of each company. The HBOC matter also involved a failure to follow appropriate procedures in reviews of interim financial information and consents to the use of Andersen's reports.

3. Putnam was the audit engagement partner for Andersen's audit and quarterly reviews of HBOC during 1997 and 1998. During this period, senior officers of HBOC were engaged in a fraud in which they purposefully caused HBOC to recognize revenue on transactions that failed to comply with GAAP. Through his audit and review work, Putnam received information indicating that some of HBOC's accounting for transactions did not conform to GAAP. Nevertheless, without expanding the scope of Andersen's reviews and audit, Putnam approved Andersen's issuance of six quarterly review reports and a 1997 audit report concerning HBOC financial statements filed with the Commission. On three separate occasions, Putnam met with HBOC's audit committee, but did not report any concerns that the company was failing to conform with GAAP.

4. In January 1999, HBOC was acquired by McKesson Corporation ("McKesson"), which changed its name to McKesson HBOC, Inc. ("McKesson HBOC"). HBOC became a wholly owned subsidiary of McKesson HBOC. On April 28, 1999, McKesson HBOC announced that it "had determined that software sales transactions aggregating $26.2 million in the company's fourth quarter ended March 31, 1999, and $16.0 million in the prior quarters of the fiscal year, were improperly recorded because they were subject to contingencies, and have been reversed. The audit process is ongoing and there is a possibility that additional contingent sales may be identified." Following this announcement, McKesson HBOC's share prices tumbled from approximately $65 to $34 a share, a decline of more than $9 billion in market value. McKesson HBOC later restated its financial results for the prior three fiscal years, primarily due to the fraud that occurred at HBOC. In total, the restatement reduced previously reported revenues by approximately $ 327.4 million.

5. Putnam served as the audit engagement partner for Andersen's audit of Ebix for the nine-month period ended December 31, 1998 ("1998 transition period").[4] During his audit work for the company, Putnam received indications of possible fraud at Ebix including earnings management, high involvement in accounting decisions by non-financial management, commitments made to analysts, the expectation of possible equity funding, the desire to maintain a high stock price, Ebix's very aggressive accounting policies, and possible opinion shopping by Ebix among accounting firms, among others. In particular, Putnam became aware that Ebix's management had taken an extremely aggressive approach to recognizing revenue from the company's software sales.

[4] In March 1998, Ebix changed its fiscal year-end from March 31 to December 31, thus requiring the company to file a Form 10-K with the Commission for the nine-month period which commenced April 1, 1998 and ended December 31, 1998.

6. In 1998, one of Ebix's products was a software program it marketed to the insurance industry called "cd.global." While auditing Ebix's revenues and accounts receivable for the 1998 transition period, Putnam learned that a number of Ebix's cd.global customers stated that they had not accepted the cd.global software for various reasons. Under GAAP, a software vendor cannot recognize revenue on the sale of software the customer has not yet accepted. Despite his awareness of the customers' complaints and their stated non-acceptance of the cd.global product, Putnam failed to properly investigate the matter, and permitted Ebix to recognize revenue on its purported sales of cd.global. Putnam then authorized the issuance of Andersen's unqualified audit opinion on Ebix's 1998 transition period financial statements, which included significant revenue relating to the purported cd.global sales.

7. Ebix's original financial statements for the 1998 transition period, filed with the Commission in April 1999, reported revenue of $19.2 million, and net income of $523,000. In June 2000, Ebix filed revised and restated financial statements with the Commission for the 1998 transition period. The revised and restated financial statements reported revenue of $13.4 million and a net loss of $5.5 million for the 1998 transition period. Thus, Ebix's original financial statements, as audited by Putnam, overstated Ebix's revenues by $5.8 million, or approximately 43 percent, and overstated Ebix's income by approximately $6 million. Over $3.4 million of the overstated revenue on Ebix's original financial statements was revenue that Ebix had improperly recognized for sales of cd.global and related services.

Putnam's Conduct in the HBOC Matter

8. HBOC principally sold large integrated healthcare management software systems. In its press releases, HBOC separately reported revenue from software sales. HBOC established an exceptional earnings track record. In each quarter between January 1996 and September 1998, HBOC beat quarterly earnings per share estimates by at least $ .02 per share.

9. Andersen considered HBOC a high risk client during 1997 and a maximum risk client during 1998. Despite this assessment, Putnam failed to design review and audit procedures commensurate with the level of risk Andersen identified at HBOC. Putnam also failed to exercise due care in the conduct of Andersen's reviews and audits by, among other things, failing adequately to expand the scope of the reviews and audits as required under Generally Accepted Auditing Standards ("GAAS") in light of significant errors and other indications that HBOC was not accounting for specific transactions in conformance with GAAP. In particular, Putnam failed to expand the scope of Andersen's work despite red flags that HBOC's management had failed to fulfill promises to comply with GAAP and continued to recognize revenue on contracts with contingent terms for software sales to customers in side letters.

10. A side letter or side agreement is any document or oral agreement containing contract terms that are not a part of the formal contract. Andersen audit bulletin number 96-18 (issued in 1996) warned its audit staff that side letters often are the cause of material revenue misstatements, especially in the software industry. HBOC's use of side letters increased the audit risk because it heightened the potential for key contract terms affecting revenue recognition (revenue contingencies) to be overlooked or deliberately hidden as part of a revenue recognition

fraud. Putnam had reason to be aware as early as 1996 that HBOC used side letters in its contract negotiations with customers.

The 1997 Quarterly Reviews

11. Beginning with his review of HBOC's interim financial statements for the first quarter of 1997, Putnam learned that HBOC's management took the position that revenue could be recognized on certain contracts where a software sale was contingent on later approval by a customer's board of directors (a "board contingency"). Under GAAP, it is improper to recognize revenue on such a transaction until the contingency is satisfied. For example, some of HBOC's software sales contracts were contingent upon approval by the customer's board of directors (a "board contingency") and therefore those contracts were not enforceable by HBOC until the customer's board of directors actually approved the contracts. Under GAAP, a company may not report revenue on any sales contract if the contract is unenforceable or performance of the contract by the customer is in doubt. Putnam discussed this issue with Jay Gilbertson ("Gilbertson"), HBOC's chief financial officer, who claimed that such board contingencies were merely perfunctory and that there was no real risk that the customer would cancel a contract based on such a contingency. Gilbertson promised to provide some sort of documentation to support his claim, but he never did so.

12. During the 1997 quarterly reviews, Putnam had reason to be skeptical concerning HBOC's accounting practices with respect to software revenue recognition. Andersen, during its audit of HBOC's 1996 year-end financial statements, identified at least one instance where a board contingency was not contained in the contract, but instead in a side letter, and revenue had been recognized.

13. Putnam also had reason to be concerned regarding the integrity of HBOC's management. In three of four quarters in 1997, Gilbertson represented in writing to Andersen that HBOC had complied with the latest draft of the new software revenue recognition guidelines that specifically prohibited revenue recognition if any board contingency existed. The new authoritative literature, Statement of Position No. 97-2 ("SOP 97-2"), entitled Software Revenue Recognition, effective January 1, 1998, specifically precluded revenue recognition if board contingencies existed. Andersen's review and audit work in the same period had revealed that HBOC had continued to enter into some contracts with board contingencies.

14. Throughout 1997, HBOC's management made public announcements of the company's revenues, net income and earnings per share prior to the completion of Andersen's audits or reviews. Putnam was aware of this practice.

Andersen's Review of HBOC's Financial Statements for the First Quarter 1997

15. HBOC reported software revenue of $68 million in the first quarter of 1997 ("Q1 1997"). During the first quarter review, Putnam's audit team tested whether the company had properly recorded revenue on $29 million in software sales and found that the company had improperly recorded revenue totaling $14 million. This was a 48 percent error rate. According to the Andersen working papers, HBOC overstated pretax income by 9.4 percent. Most of the

improperly recorded revenue related to contracts that were subject to board contingencies. Andersen's auditors also found an instance where HBOC had recognized revenue on a software contract signed after quarter end. GAAP requires that revenues must be reported in the fiscal period in which they occur. HBOC's management refused to eliminate this improperly recorded revenue from its financial statements for the first quarter of 1997.

16. Putnam approved Andersen's quarterly review report for the first quarter 1997, which was incorporated into HBOC's Form 10-Q filed with the Commission. Among other things, Andersen's report stated: "We conducted our review in accordance with standards established by the American Institute of Certified Public Accountants. . . . Based on our review, we are not aware of any material modifications that should be made to the financial statements referred to above for them to be in conformity with generally accepted accounting principles."

17. HBOC's improper recording of revenue and other accounting errors in the first quarter of 1997 was material information for the company's stockholders. In its quarterly earnings releases, HBOC reported software revenue as a separate line item. HBOC's software revenue for the quarter was overstated by 21 percent. In addition, HBOC's reported net income was overstated by 10.3 percent.

18. Andersen's review for the first quarter of 1997 revealed accounting errors that were dramatically higher than previous periods. Despite the significant increase in the errors found, Putnam did not direct his team to make additional inquiries or employ other procedures for that quarter.

Andersen's Review of HBOC's Financial Statements for the Second Quarter 1997

19. In the 1997 second quarter review, Putnam learned that HBOC continued to recognize revenue on certain contracts containing board contingencies. He also learned that HBOC recorded revenue improperly on software sales subject to other types of contingencies including subsequent management or legal approval or a right to cancel the contract at a future date. Moreover, Putnam learned that HBOC senior executives had written some of these contingencies in side letters. Putnam learned that at least one HBOC contract included in first quarter revenue had been canceled when a customer's board of directors failed to approve the deal. Additionally, Putnam's audit team found another instance where HBOC had recognized revenue on a contract that had not been executed until after quarter end. Andersen recommended to HBOC's management that the revenue from these contingent contracts be reversed.

20. Gilbertson again refused to make any adjustments in HBOC's financial statements to correct these errors. The errors were material to HBOC's financial statements in both type and amount. Based on these errors, the pretax income and net income reported by HBOC in its earnings release and Form 10-Q were overstated by approximately 12 percent and HBOC's reported software revenue was overstated by almost 7 percent.

21. Despite the accounting errors found in the second quarter review, and despite HBOC's continued practice of putting revenue contingencies into side letters, Putnam did not direct his team to make additional inquiries or employ other procedures for the quarter.

22. Putnam approved the issuance of Andersen's unqualified quarterly review report for the second quarter 1997, which was incorporated into HBOC's Form 10-Q filed with the Commission. Among other things, Andersen's report stated: "We conducted our review in accordance with standards established by the American Institute of Certified Public Accountants.... Based on our review, we are not aware of any material modifications that should be made to the financial statements referred to above for them to be in conformity with generally accepted accounting principles."

Andersen's Review of HBOC's Financial Statements for the Third Quarter 1997

23. In the third quarter of 1997, Putnam and his audit team continued to find instances where HBOC recognized software revenue despite the existence of contingencies in the sales contracts. The auditors found some contingencies in side letters written by HBOC senior sales executives. Despite this, Putnam did not direct his team to make additional inquiries or employ other procedures to test software revenue Andersen proposed to HBOC's management that the company make adjustments for certain errors found equal to 7 percent of pretax income. Gilbertson refused to make these adjustments. Putnam did not pursue the issue further.

24. The accounting errors in HBOC's financial statements for the third quarter of 1997 were material both in type and amount. The 1999 investigation in connection with McKessonHBOC's restatement revealed that HBOC, in its earnings release and Form 10-Q report for the third quarter, overstated software revenue, pretax and net income by 15.5 percent, 15 percent and 15 percent, respectively, based on these errors.

25. Putnam authorized the issuance of Andersen's unqualified quarterly review report for the third quarter 1997, which was incorporated into HBOC's Form 10-Q filed with the Commission. Among other things, Andersen's report stated: "We conducted our review in accordance with standards established by the American Institute of Certified Public Accountants.. . . Based on our review, we are not aware of any material modifications that should be made to the financial statements referred to above for them to be in conformity with generally accepted accounting principles."

Andersen's Audit of HBOC's Financial Statements for the 1997 Year End

26. Andersen conducted an audit of HBOC's financial statements for the year ended December 31, 1997. Putnam was the engagement partner for this audit. The audit staff included a manager and two associates. In addition, Andersen assigned a concurring partner to review the results of the audit work. Field work for the audit was completed on February 6, 1998. On March 9, 1998, Andersen issued an audit report concerning HBOC's 1997 financial statements and expressed an unqualified opinion concerning those financial statements. Andersen's audit report was dated February 6, 1998.

Failure to Adequately Test and Confirm Software Revenue

27. Andersen's audit included testing of HBOC's software revenue and trade accounts receivable. The audit confirmation process was the primary audit test performed by Putnam and

his staff to ensure the completeness of HBOC's customer contract files. Andersen sent eight audit requests for confirmation of accounts receivable (eleven fewer than sent during the 1996 audit) to selected HBOC customers. The confirmation requests asked the customers to confirm any amounts owed to HBOC and that no revenue contingencies existed on software purchased from HBOC. Only three customers responded, two noting contingencies that were contained in side letters (a 66 percent exception rate).

28. Although two customers had responded to Andersen that side letter contingencies existed in their contracts, Putnam did not direct his staff to send out any additional confirmations confirming software sales for this period to see if there were additional contingencies or other problems that would further affect HBOC's financial statements. Putnam did not direct his staff to perform any other additional testing to ensure that HBOC's contract files were complete. Putnam and his staff did not significantly test the flow of documentation from the sales department to the contract files maintained in the accounting department. Putnam and his staff did not check with the sales department to find out if it possessed any other sales documents not forwarded to the accounting department. Putnam and his staff did not gain a full understanding of HBOC's policies or practices for using side letters. Putnam and his staff did not ask whether HBOC maintained a listing of side letters. Finally, Putnam and his staff did not obtain representations from HBOC's sales personnel concerning the existence of other side letters.

Failure to Examine Other Accounting Improprieties

29. During the 1997 audit, Putnam and his staff also identified other accounting improprieties at HBOC. These included the premature recognition of revenue on software maintenance arrangements and the accrual of excessive acquisition reserves (so called "cookie jar" reserves).

30. HBOC sold many of its software systems together with a service agreement for periodic maintenance. Under these software maintenance arrangements, HBOC provided maintenance over a period of years. HBOC customers typically paid a lump sum during the first year of the contract, which covered both the software license and the service and maintenance provided in future years. GAAP requires that revenue that is to be earned over a period of years be deferred until earned or when the service and maintenance is provided. Putnam told Gilbertson that HBOC was recognizing too much maintenance revenue and that the company needed to increase the percentage of maintenance revenue it deferred. Gilbertson refused to make Andersen's proposed adjustment to correct the premature recognition of revenue. Instead, Gilbertson promised Putnam that he would increase HBOC's deferral percentage in following quarters until it was adequate.

31. During 1997, HBOC acquired other companies and, in its accounting for these acquisitions, HBOC allocated funds for expected future costs and expenses of the acquisitions. These "acquisition reserves" totaled $ 95.3 million. Andersen audited the acquisition reserves and concluded that HBOC's reserves were $ 16 million greater than was needed. Andersen proposed to HBOC's management, in accordance with GAAP, that $ 16 million should be reversed. HBOC's management refused to make the adjustment, but promised Andersen that it would only use the reserve for acquisition related costs. Putnam did not pursue the matter

further. The amount of the excessive acquisition reserves was material. Those reserves overstated HBOC's reported nonrecurring expenses by 20 percent.

32. On or about March 9, 1998, Putnam authorized Andersen to issue its audit report for HBOC's year ended December 31, 1997. In its report, Andersen stated: "We conducted our audits in accordance with generally accepted auditing standards. . . . In our opinion, the financial statements referred to above present, fairly, in all material respects, the financial position of HBO & Company and subsidiaries... in conformity with generally accepted accounting principles."

Putnam Did Not Fully Inform HBOC's Audit Committee Concerning the Results of the Reviews and Audit

33. Putnam met with HBOC's audit committee in November 1997 and again in February 1998. At neither meeting did Putnam inform the audit committee that HBOC was misapplying GAAP, except that Putnam informed the audit committee that HBOC was recognizing too much maintenance revenue and that the company needed to increase the percentage of maintenance revenue it deferred. Nor did Putnam report his disagreements with Gilbertson regarding these practices. Instead, at each meeting Putnam reported that Andersen found no significant problems or exceptions and that Andersen enjoyed the full cooperation of HBOC management. Putnam also informed the audit committee that HBOC was in compliance with the new authoritative literature governing software revenue recognition. Putnam failed to disclose to the audit committee that HBOC's practice of booking software sales when board and other revenue contingencies existed was directly contrary to GAAP. Further, Putnam failed to inform the audit committee that Andersen had identified not only board contingencies but other types of revenue contingencies at HBOC and that these contingencies were sometimes found in side letters.

34. Sometime after the February 1998 audit committee meeting, Andersen drafted a letter to HBOC's management, which Putnam reviewed. Among other topics, the letter recommended that HBOC forbid its senior sales executives and sales representatives from entering into side letter contingencies. Putnam's staff delivered a copy of the draft letter to HBOC's management but did not provide a copy of the draft letter to the audit committee or inform the audit committee of its contents. Putnam did not sign or deliver a final version of the letter to HBOC's management.

Andersen's Review of HBOC's Financial Statements for the First Quarter 1998

35. Andersen conducted a review of HBOC's interim financial statement for the quarter ended March 31, 1998. During this first quarter review, Putnam discovered that HBOC was misusing the acquisition reserve it accrued during 1997 to offset current period operating expenses. This use of the acquisition reserve did not conform with GAAP and had the effect of overstating HBOC's reported net income. Such use of the acquisition reserve was contrary to the representations of HBOC management to Putnam about how HBOC would use these reserves.

36. During the first quarter review, Putnam and his team identified another instance where HBOC had recognized revenue despite the existence of a revenue contingency contained

in a side letter. The side letter was signed by HBOC's senior vice president of sales. Putnam proposed that the revenue from this transaction be reversed, but Gilbertson refused. Once again, Putnam did not expand the scope of Andersen's testing to see if there were additional side letters containing revenue contingencies. Putnam and his team did not document in its working papers any explanation why a software transaction containing a contingency was recorded as revenue, nor did they obtain any explanation for why the senior vice president of sales entered into a side letter that contained a revenue contingency despite Andersen's written recommendation to stop doing so.

37. Putnam approved the issuance of Andersen's unqualified quarterly review report for the first quarter of 1998, which was incorporated into HBOC's Form 10-Q filed with the Commission. Among other things, the report stated: "We [Andersen] conducted our review in accordance with standards established by the American Institute of Certified Public Accountants. ...Based on our review, we are not aware of any material modifications that should be made to the financial statements referred to above for them to be in conformity with generally accepted accounting principles."

38. By approximately April 1998, the engagement manager on the HBOC account (Putnam's direct subordinate on the HBOC account) became concerned that HBOC was managing earnings through its non-GAAP accounting. On several occasions, the engagement manager stated these concerns to Putnam. Putnam shared these concerns.

39. In May 1998, Putnam and his engagement team called a special meeting with Gilbertson and others at HBOC to again reiterate that HBOC needed to correct its non-GAAP accounting practices. In response to Putnam's criticisms in the 1997 year-end audit, Gilbertson repeated promises to correct HBOC's non-GAAP practices, including deferring the appropriate revenue relating to software maintenance arrangements and using acquisition reserves only to offset acquisition related expenses.

Andersen's Review of HBOC's Financial Statements for the Second Quarter 1998

40. Andersen conducted a review of HBOC's interim financial statements for the quarter ended June 30, 1998. During this second quarter review, Andersen discovered a number of accounting errors. Andersen found that HBOC had again applied its acquisition reserves to current expenses, that HBOC continued to recognize too much revenue from software maintenance arrangements, and that HBOC had understated its allowance for doubtful accounts. Putnam told Gilbertson that if HBOC did not reverse the application of the acquisition reserves, Andersen would not issue its review report. After a heated discussion, Gilbertson agreed to reverse the recording of current expenses against the acquisition reserve. Putnam however, did not confront HBOC management on the other accounting errors Andersen found and HBOC made no correcting entries for those items. These remaining accounting errors were material in amount and overstated HBOC's reported pretax income for the quarter by 5.45 percent, not including the understatement for doubtful accounts. Nonetheless, Putnam did not direct his team to make additional inquiries or employ other procedures for the quarter.

41. Putnam approved the issuance of Andersen's unqualified quarterly review report for the second quarter of 1998, which was incorporated into HBOC's Form 10-Q filed with the Commission. Among other things, the report stated: "We [Andersen] conducted our review in accordance with standards established by the American Institute of Certified Public Accountants.... Based on our review, we are not aware of any material modifications that should be made to the financial statements referred to above for them to be in conformity with generally accepted accounting principles."

Andersen's Review of HBOC's Financial Statements for the Third Quarter 1998

42. Andersen conducted a review of HBOC's interim financial statements for the quarter ended September 30, 1998. During that quarter review, Andersen discovered that HBOC prematurely recognized revenue on software maintenance arrangements because Gilbertson had not increased HBOC's deferral percentage as he had promised. Andersen proposed a $9.5 million adjustment for this error. Andersen also proposed an adjustment to increase the reserve for bad debt by $4.5 million. Ultimately, HBOC did not make the proposed adjustments and Putnam did not pursue the issue. Based upon this error, HBOC overstated net income by $14 million for the nine months ended September 30, 1998. This overstatement was material in amount. This was 11 percent of HBOC's reported pretax income and net income for the quarter or 3.8 percent of HBOC's reported pretax income and net income for the nine-month period.

43. During the third quarter of 1998, based in part upon Gilbertson's representation that there were two transactions, Putnam approved HBOC's accounting for a transaction in which HBOC sold $30 million of its software and purchased $74 million of the same customer's product. Although documented as separate transactions, both the transactions were entered into on September 28, 1998 (two days before the end of the third quarter). HBOC recorded $30 million as a sale of software to the customer in the third quarter of 1998 and included that amount in its reported revenue for the quarter. The transaction accounted for 20 percent of software revenue recorded during the quarter. By recording $30 million in revenue from the transaction, HBOC reported earnings of 19 cents per share, thus exceeding the consensus expectation of Wall Street analysts that HBOC would earn 18 cents per share in the quarter. Without the revenue from this transaction, HBOC could only have reported earnings of 16 cents per share.

44. While the transaction was still being negotiated, Putnam had several conversations with HBOC management about the structure of the deal. HBOC had never before entered into a reseller arrangement of this magnitude, nor had it ever entered into an arrangement where it was simultaneously selling and purchasing product from the same company. In a discussion with Gilbertson, Putnam advised that this accounting for the transfer of HBOC software to the customer would be correct if (a) the two transactions were not linked; and (b) there was a defined end-user for the HBOC software. Gilbertson assured Putnam that the sale and purchase from the customer were independent of each other, and that the customer was donating the $30 million of software to charity hospitals, who were the end users. Both of these statements by Gilbertson were false. In fact, the two transactions were completely dependent on

each other, and the customer had no intention of donating $30 million of software. Instead, the customer expected HBOC to assist it in reselling the product to end-users.

45. Putnam had reason to know that Gilbertson's statements about the key elements of the transaction were false. HBOC had never before entered into a reseller arrangement of this magnitude and the transaction accounted for more than 20 percent of the net income for the period. Although documented in two separate contracts, both the contract for HBOC's sale to the customer and the contract for the purchase from the same customer were signed on the same day (two days before quarter end). Finally, Gilbertson's explanation that the customer intended to donate $ 30 million of highly complex software was so extraordinary and unusual that Putnam reasonably should have confirmed the information with the customer.

46. Putnam approved the issuance of Andersen's unqualified quarterly review report for the third quarter of 1998, which was incorporated into HBOC's Form 10-Q filed with the Commission. Among other things, the report stated: "We [Andersen] conducted our review in accordance with standards established by the American Institute of Certified Public Accountants.... Based on our review, we are not aware of any material modifications that should be made to the financial statements referred to above for them to be in conformity with generally accepted accounting principles."

47. In July 1999, McKesson HBOC restated HBOC's revenues for the third quarter of 1998 and eliminated the $30 million transaction.

Putnam Failed to Fully Advise HBOC's Audit Committee of Andersen's Findings

48. Putnam attended a November 1998 meeting of HBOC's audit committee, where HBOC's Chairman informed the audit committee that Gilbertson was resigning from his position as CFO of HBOC. Gilbertson's resignation was unexpected. The HBOC Chairman asked Putnam if he had a "Cendant on his hands." Cendant was a widely-reported financial fraud case. In response to the Chairman's question, Putnam responded that he didn't know of anything. Putnam did not report to the audit committee his continued disagreements with Gilbertson regarding HBOC's accounting, Gilbertson's failure to make good on promises to Andersen with respect to acquisition reserves and maintenance revenue, repeated discoveries by Andersen of contingencies in its sales contracts that affected revenue recognition, any problems with HBOC's internal controls and management, nor any of the myriad other accounting errors and non-GAAP accounting that Andersen had found over numerous periods.

Andersen Consented To Use Of Its Reports in McKesson's Registration Statements

49. In October 1998, McKesson and HBOC announced that McKesson would acquire HBOC. In preparation for the acquisition, McKesson made several filings with the Commission. On October 30 and November 13, 1998, McKesson filed registration statements on Forms S-3 and S-4, respectively. On November 23 and 27, 1998, McKesson filed amendments to its Form S-3 and Form S-4 registration statements, respectively. Included in each of these McKesson filings was Andersen's consent to incorporation by reference of its report dated February 6, 1998 with respect to HBOC's consolidated financial statements for the period ended December 31,

1997. Putnam approved Andersen's consent to the use of its report in these McKesson filings. Despite a number of accounting errors that affected Andersen's February 6, 1998 report, Putnam did not investigate the impact of such errors on HBOC's financial statements as of December 31, 1997 and did not insist on appropriate revision of Andersen's report.

Andersen's Work on HBOC's Quarter Ended December 31, 1998

50. In December 1998, less than a month after his report to HBOC's audit committee, Putnam met with other Andersen personnel to discuss the HBOC engagement. In connection with the audit planning of HBOC during the summer of 1998, Andersen assessed HBOC as a maximum risk client. In accordance with Andersen's internal risk policy an annual consultation was required for all audit clients given a maximum risk rating. The consultation included an exercise involving a "what if" fraud risk assessment. In an outline attached to a memo to the file, dated December 7, 1998, the engagement manager assigned to HBOC documented the "what ifs" that were to be discussed at the meeting. Among other things the memo stated:

> Fraud would be reflected in the financial statements in the area . . . of improper revenue recognition, . . . intentional understatement of the accounts receivable reserve . . . and (other) indications of aggressive GAAP (which may be a prelude to fraud) including acquisition reserves and deferred maintenance. Analyst commitments (no missed earnings for 28 consecutive quarters) . . . and instances of side agreements.

51. The topics addressed in the memo were precisely the types of items that would later cause the massive restatement. Yet, Putnam never adequately disclosed these concerns to HBOC's audit committee.

52. In preparation for a 1998 year-end audit of HBOC, Andersen tested a portion of HBOC's accounts receivable in each quarter by requesting that certain customers confirm the amounts they owed to HBOC and that there were no contingencies in their sales contracts. As discussed above, customer responses to these requests revealed that HBOC entered into sales contracts and recorded revenue on those sales although the contracts contained contingencies. In approximately August 1998, Andersen received a response from an HBOC customer sent out in the second quarter of 1998 in which the customer noted the existence of a side letter containing revenue contingencies. Although the response from the customer was included in Andersen's working papers for the quarter, Andersen did not pursue the issue with either HBOC or the customer.

53. Later, Putnam and his team identified numerous other side letters containing revenue contingencies and instances where revenue had been improperly recognized in the first three quarters of 1998. Despite these red flags, Putnam approved Andersen's consent to McKesson's use of Andersen's February 6, 1998 report on HBOC's 1997 financial statements in its registration statements filed in October and November 1998.

54. In January 1999 McKesson Corporation completed its acquisition of HBOC. McKesson told Andersen that it would not be necessary for Andersen to complete the audit for

the period ended December 31, 1998, but asked Andersen to perform certain of the procedures that would have been done had the audit been completed. Putnam was the engagement partner for this work.

55. During the work related to year-end 1998, Putnam learned that HBOC had entered into more side letters with contingencies and improperly recorded revenue from those transactions. Nonetheless, Putnam did not require his team to investigate the extent of contingencies affecting contracts recorded in prior periods and to expand the scope of its procedures to attempt to identify other contract contingencies and improper revenue recognition.

56. In or about April 1999, McKesson engaged Andersen to conduct an audit of HBOC's financial statements for periods ended March 31, 1997 and March 31, 1998. Putnam was the engagement partner for this work. Putnam approved a report by Andersen, dated July 12, 1999, concerning HBOC's March 31, 1997 and March 31, 1998 financial statements. Andersen expressed an opinion that HBOC's financial statements presented fairly, in all material respects, the financial position of HBOC as of those dates and the results of operations and their cash flows for the years then ended in conformity with GAAP.

57. On July 14, 1999, McKesson HBOC filed an annual report on Form 10-K including consolidated financial statements for the companies and its subsidiaries as of March 31, 1997, March 31, 1998 and March 31, 1999. The company also reported restatements of certain income statement items for quarters in 1997 and 1998. For the year ended March 31, 1998, McKesson reported that \$39.7 million in revenues was improperly reported due to improper application of SOP 91-1 and \$19 million in contingent revenues were improperly recognized in prior filings by HBOC. For the three-month period ended June 30, 1998, McKesson reported that \$25.8 million in revenues was improperly reported due to improper application of SOP 97-2 and \$32.6 million in contingent revenues were improperly recognized in prior filings by HBOC. For the three month period ended September 30, 1998, McKesson reported that \$20.8 million in revenues was improperly reported due to improper application of SOP 97-2 and \$22.9 million in contingent revenues were improperly recognized in prior filings by HBOC. For the three-month period ended December 31, 1998, McKesson reported that \$33.7 million in revenues was improperly reported due to improper application of SOP 97-2 and \$48.8 million in contingent revenues were improperly recognized in prior filings by HBOC. McKesson adjusted for these errors in its consolidated financial statements.

58. Putnam approved Andersen's consent to the inclusion of its July 12, 1999, audit report in McKesson's Form 10-K filing.

Summary

59. In performing the HBOC quarterly reviews and annual audit, Putnam failed to comply with GAAS, through his acts and omissions including but not limited to:

a. Failing to comply with generally accepted auditing standards in planning the work, adequately supervising the work performed, and failing to obtain a sufficient understanding of internal controls to plan the audit and to determine the nature and extent of tests to be performed;

b. Failing to exercise due professional care and maintain an attitude of professional skepticism to provide reasonable assurance of detecting both material errors and fraud in the financial statements;

c. Failing to obtain sufficient competent evidential matter to afford a reasonable basis for Andersen's opinion regarding the financial statements of HBOC;

d. Failing to follow appropriate procedures in reviews of interim financial information;

e. Failing to follow appropriate procedures for consents to the use of Andersen's reports;

f. Failing to follow appropriate procedures for communications with HBOC's audit committee;

g. Failing appropriately to consider and assess the risk of material misstatement due to fraud and fraud risk factors;

h. Failing to have a sufficient basis for Andersen's statements in its quarterly review reports that the firm was not aware of any material modifications that should be made to HBOC's financial statements for them to conform to GAAP;

i. Failing to have a sufficient basis for Andersen's opinion that the firm's audit of HBOC's financial statements had been performed in accordance with GAAS.

Putnam's Improper Professional Conduct in the Ebix Audit

Ebix's Business

60. Ebix developed and marketed, through the use of license agreements, multi-function software for the insurance industry. In the latter half of 1998, Ebix began marketing a software product called "cd.global" to its U.S. and Canadian customers. Cd.global was a highly sophisticated, complex program, which required a significant amount of customization and installation before the customer could use the program. Among other things, cd.global was supposed to allow electronic exchange of policy information between insurance agencies and insurance carriers, and to convert such information into the standard forms used in the insurance industry. These particular functions of cd.global were known as "AL3" in the domestic version and "CSIO" in the Canadian version.

Increased Audit Risk Related to Ebix

61. Auditors are required to exercise professional skepticism when performing audit procedures.

62. Putnam became the engagement partner for Andersen's audit of Ebix's 1998 transition period financial statements in or about March 1999, replacing the first engagement partner who had been assigned to the 1998 transition period audit. At the time Putnam became Ebix's audit engagement partner, the previous engagement partner had been involved in a series of meetings and discussions with Ebix's management concerning various revenue recognition issues encountered during the audit process. The previous engagement partner had recommended several downward adjustments to the revenue that Ebix had recognized on its 1998 transition period financial statements. Over $3.4 million of the overstated revenue on Ebix's original 1998 transition period financial statements was sales and service revenue that Ebix had improperly recognized concerning its cd.global product.

63. Soon after Putnam became the Ebix engagement partner, the Andersen audit staff under his supervision prepared a memorandum dated March 15, 1999. The March 15, 1999 memorandum recounted that during the audit process, Andersen had a number of concerns related to Ebix's positions on accounting matters, and, in particular, on Ebix's handling of revenue recognition on software sales. The memorandum noted that Ebix's management had taken "an extremely aggressive approach" in interpreting relevant GAAP standards relating to "a significant amount of software revenue recognized."

64. In addition to noting Ebix's extremely aggressive approach to software revenue recognition, the March 15, 1999 memorandum also observed that Andersen became aware of a number of factors that increased the risk of fraud in Ebix's financial statements:

> The fraud indicators relate to such areas as possible earnings management, high involvement in accounting decisions by non-financial management (i.e. CEO), commitments made to analysts, expectation of possible equity funding, desire to maintain a high stock price, very aggressive accounting policies, possible "opinion shopping," disputes over adjustments, etc.

65. The March 15, 1999 memorandum further stated that due to the existence and nature of the fraud indicators described above, Andersen had "modified our audit approach to substantially increase the amount of audit work we perform in the revenue recognition area." These modifications would include, among other things, "substantial contract confirmation work" and "review of all contracts entered into during the year."

The Failed Cd. Global Contract Confirmation Process

66. During its 1998 transition period, Ebix entered into approximately thirty license agreements with its U.S. and Canadian customers for cd.global software. In conducting the audit, Putnam and the audit team sent written confirmations to sixteen Ebix customers who had purchased cd.global in the 1998 transition period to verify information concerning those license agreements. Andersen received ten responses to its confirmation requests; seven of these were "negative," *i.e.*, indicated that the customer took exception to the information being confirmed.

67. In general, each of Ebix's cd.global license agreements contained similar provisions concerning the customer's obligation to pay for the software, which conditioned

payment on the successful installation and implementation of cd.global. The license agreements generally conditioned the customer's obligation to pay for the software upon, among other things, a successful test conversion of the customer's data from its existing system to the cd.global data format, and upon full functionality of cd.global, including the AL3/CSIO component of the software. Despite these common provisions in the cd.global license agreements, Andersen's confirmations completely failed to address these pre-conditions to payment. For example, none of the confirmations sent to cd.global customers requested information concerning, among other things, the date upon which a successful test conversion of the customer's data to the cd.global data format had occurred, the number of individual "seat licenses" accepted by a customer, or the date upon which the software's AL3/CSIO component had become functional.

68. Under Paragraph 20 of SOP 97-2, "[a]fter delivery, if uncertainty exists about customer acceptance of the software, license revenue should not be recognized until acceptance occurs."

69. Each of the seven negative responses to Andersen's confirmation requests indicated that Ebix's customers had not yet accepted the cd.global software due to functionality problems with the software. In addition, one confirmation response indicated that a customer had not accepted the number of individual "seat licenses" represented by the invoices for which Andersen sought confirmation.

70. Despite the negative cd.global customer responses to Andersen's confirmations, Putnam failed personally to contact, or to have his staff contact, any of the customers who responded to the confirmations. Nor did Putnam ask for, or review, Ebix's customer correspondence files to further investigate the nature of the problems raised by the confirmation process. Putnam did not attempt to seek further information concerning the acceptance of the cd.global software from any independent source. Instead, Putnam relied on Ebix's management's representation that the cd.global software was fully functional, and allowed Ebix to recognize significant revenue from purported sales of cd.global in the 1998 transition period, including revenue from the customers who had submitted negative responses to Andersen's confirmations. In so doing, Putnam failed to exercise an appropriate degree of professional skepticism and critical assessment of audit evidence in performing the Ebix audit.

71. On April 15, 1999, Ebix filed with the Commission a Form 10-K for the nine-month period ended December 31, 1998. Ebix included financial statements in this Form 10-K that reported revenue of $19.2 million and net income of $523,000. The financial statements were accompanied by an Arthur Andersen audit report containing an unqualified opinion (with a going concern emphasis paragraph) that Ebix's financial statements presented fairly, in conformity with generally accepted accounting principles, the results of Ebix's operations for that period.

72. On June 1, 2000, Ebix filed an amended Form 10-K containing revised and restated financial statements for the 1998 transition period. In the restatement, Ebix reported revenue of $13.4 million, and a net loss for the period of $5.5 million. Consequently, the original financial statements overstated Ebix's revenue by $5.8 million, or approximately 43 percent, and overstated Ebix's net income by approximately $6 million.

73. The customers providing negative responses disputed a total of $638,955 that Ebix claimed they owed December 31, 1998. In its restatement, Ebix reversed over $1.2 million in revenues improperly recognized from the customers that provided negative responses to confirmation requests.

Summary

74. In performing the Ebix audit, Putnam failed to comply with GAAS, through his acts and omissions including but not limited to:

a. Failing to comply with GAAS in planning the work, adequately supervising the work performed, and failing to obtain a sufficient understanding of internal controls to plan the audit and to determine the nature and extent of tests to be performed;

b. Failing to exercise due professional care and maintain an attitude of professional skepticism to provide reasonable assurance of detecting both material errors and fraud in the financial statements;

c. Failing to obtain sufficient competent evidential matter to afford a reasonable basis for Andersen's opinion regarding the financial statements of Ebix;

d. Failing to create, to implement, to evaluate, and to interpret a confirmation process that would have led to the detection of improperly recognized revenue;

e. Failing appropriately to consider and assess the risk of material misstatement due to fraud and fraud risk factors;

f. Issuing an audit report containing an unqualified opinion without performing audit steps sufficient to provide a basis for that opinion; and

g. Failing to have a sufficient basis for Andersen's opinion that Ebix's financial statements conformed to GAAP, specifically SOP 97-2, relating to the recognition of revenue.

Violations of the Federal Securities Laws and Rule 102(e)

75. In connection with the audits and reviews of the financial statements of HBOC, as described above, Putnam was a cause of one or more of HBOC's violations of Section 17(a)(2) and (3) of the Securities Act.

76. Rule 102(e)(1)(ii) of the Commission's Rules of Practice provides that the Commission may deny the privilege of appearing or practicing before it to any person who is found to have engaged in improper professional conduct. With respect to persons licensed to practice as accountants, "improper professional conduct" may include negligent conduct evidenced by "repeated instances of unreasonable conduct, each resulting in a violation of

applicable professional standards, that indicate a lack of competence to practice before the Commission." Rule 102(e)(1)(ii), Rule 102(e)(1)(iv)(B)(2).

77. In connection with the audits and reviews of the financial statements of HBOC and Ebix, as described above in Paragraphs 59 (a) through (i) and 74 (a) through (g), Putnam engaged in improper professional conduct by repeatedly engaging in unreasonable conduct, resulting in a violation of applicable professional standards that indicate a lack of competence to practice before the Commission.

Findings

78. Based upon the foregoing, the Commission finds that Respondent Putnam was a cause of one or more of HBOC's violations of Section 17(a)(2) and (3) of the Securities Act.

79. Further, based upon the foregoing, the Commission finds that Respondent Putnam engaged in improper professional conduct pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Putnam's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) and (3) of the Securities Act;

B. Respondent is denied the privilege of appearing or practicing before the Commission as an accountant.

C. After five years from the date of this order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that respondent's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

   a. Respondent, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective ;

b. Respondent, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision or, if the Board has not conducted an inspection, has received an unqualified report relating to his, or the firm's, most recent peer review conducted in accordance with the guidelines adopted by the former SEC Practice Section of the American Institute of Certified Public Accountants Division for CPA Firms or an organization providing equivalent oversight and quality control functions;

c. Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

d. Respondent acknowledges his responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

D. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Nancy M. Morris
Secretary

J. Lynn Taylor

By: J. Lynn Taylor
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
April 29, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13027

In the Matter of **American Golden Century Investments, Inc.,** **Growtex, Inc. (n/k/a Canadexx, Inc.), and** **Information Highway.com, Inc.,** **Respondents.**	**ORDER INSTITUTING PROCEEDINGS AND NOTICE OF HEARING PURSUANT TO SECTION 12(j) OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents American Golden Century Investments, Inc., Growtex, Inc. (n/k/a Canadexx, Inc.), and Information Highway.com, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. American Golden Century Investments, Inc. ("American Golden") (CIK No. 1094656) is an expired Nevada corporation located in Jlanshe beilu, ChengDu City, People's Republic of China with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). American Golden is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2005, which reported a net loss of $366,321 for the prior three months.

2. Growtex, Inc. ("Growtex") (n/k/a Canadexx, Inc.) (CIK No. 1084186) is an inactive Florida corporation located in Kalispell, Montana with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). According to a Form 8-K filed on April 8, 2003, Canadexx, a private Florida corporation, acquired all of the outstanding shares of common stock of Growtex on March 7, 2003, and elected to become the successor issuer to Growtex for reporting purposes under the

Exchange Act. Growtex is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended October 31, 2002, which reported a net loss of $37,723 from the date of inception in 1999 to the period ended October 31, 2002.

3. Information Highway.com, Inc. ("Information Highway") (CIK No. 1081240) is a Florida corporation located in Richmond, British Columbia, Canada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Information Highway is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended February 28, 2002, which reported a net loss of $263,818 for the prior three months. As of April 15, 2008, Information Highway's common stock (symbol "IHWY") was traded on the over-the-counter markets.

B. DELINQUENT PERIODIC FILINGS

4. As discussed in more detail above, all of the respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

5. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports (Forms 10-K or 10-KSB), and Rule 13a-13 requires issuers to file quarterly reports (Forms 10-Q or 10-QSB).

6. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified or Express Mail, or by other means permitted by the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Nancy M. Morris

Nancy M. Morris
Secretary

Attachment

Appendix 1
Chart of Delinquent Filings
American Golden Century Investments, Inc., et al.

Company Name	Form Type	Period Ended	Due Date	Date Rec'd	Months Delinquent (rounded up)
American Golden Century Investments, Inc.					
	10-QSB	12/31/05	02/14/06	Not filed	26
	10-QSB	03/31/06	05/15/06	Not filed	23
	10-KSB	06/30/06	09/28/06	Not filed	19
	10-QSB	09/30/06	11/14/06	Not filed	17
	10-QSB	12/31/06	02/14/07	Not filed	14
	10-QSB	03/31/07	05/15/07	Not filed	11
	10-KSB	06/30/07	09/28/07	Not filed	7
	10-QSB	09/30/07	11/14/07	Not filed	5
	10-QSB	12/31/07	02/14/08	Not filed	2
Total Filings Delinquent	9				
Growtex, Inc. (n/k/a Canadexx, Inc.)					
	10-QSB	01/31/03	03/17/03	Not filed	61
	10-KSB	04/30/03	07/29/03	Not filed	57
	10-QSB	07/31/03	09/15/03	Not filed	55
	10-QSB	10/31/03	12/15/03	Not filed	52
	10-QSB	01/31/04	03/16/04	Not filed	49
	10-KSB	04/30/04	07/29/04	Not filed	45
	10-QSB	07/31/04	09/14/04	Not filed	43
	10-QSB	10/31/04	12/15/04	Not filed	40
	10-QSB	01/31/05	03/17/05	Not filed	37
	10-KSB	04/30/05	07/29/05	Not filed	33
	10-QSB	07/31/05	09/14/05	Not filed	31
	10-QSB	10/31/05	12/15/05	Not filed	28
	10-QSB	01/31/06	03/17/06	Not filed	25
	10-KSB	04/30/06	07/31/06	Not filed	21
	10-QSB	07/31/06	09/14/06	Not filed	19
	10-QSB	10/31/06	12/15/06	Not filed	16
	10-QSB	01/31/07	03/19/07	Not filed	13
	10-KSB	04/30/07	07/30/07	Not filed	9
	10-QSB	07/31/07	09/14/07	Not filed	7

Company Name	Form Type	Period Ended	Due Date	Date Rec'd	Months Delinquent (rounded up)
Growtex, Inc. (n/k/a Canadexx, Inc.)					
	10-QSB	10/31/07	12/17/07	Not filed	4
	10-QSB	01/31/08	03/17/08	Not filed	1
Total Filings Delinquent	21				
Information Highway.com, Inc.					
	10-KSB	05/31/02	08/29/02	Not filed	68
	10-QSB	08/31/02	10/15/02	Not filed	66
	10-QSB	11/30/02	01/14/03	Not filed	63
	10-QSB	02/28/03	04/14/03	Not filed	60
	10-KSB	05/31/03	08/29/03	Not filed	56
	10-QSB	08/31/03	10/15/03	Not filed	54
	10-QSB	11/30/03	01/14/04	Not filed	51
	10-QSB	02/28/04	04/14/04	Not filed	48
	10-KSB	05/31/04	08/30/04	Not filed	44
	10-QSB	08/31/04	10/15/04	Not filed	42
	10-QSB	11/30/04	01/14/05	Not filed	39
	10-QSB	02/28/05	04/14/05	Not filed	36
	10-KSB	05/31/05	08/29/05	Not filed	32
	10-QSB	08/31/05	10/17/05	Not filed	30
	10-QSB	11/30/05	01/14/06	Not filed	27
	10-QSB	02/28/06	04/14/06	Not filed	24
	10-KSB	05/31/06	08/29/06	Not filed	20
	10-QSB	08/31/06	10/17/06	Not filed	18
	10-QSB	11/30/06	01/14/07	Not filed	15
	10-QSB	02/28/07	04/14/07	Not filed	12
	10-KSB	05/31/07	08/29/07	Not filed	8
	10-QSB	08/31/07	10/15/07	Not filed	6
	10-QSB	11/30/07	01/14/08	Not filed	3
	10-QSB	2/28/08	04/14/08	Not filed	0
Total Filings Delinquent	24				

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 57733 / April 29, 2008

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2816 / April 29, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13028

In the Matter of MICHAEL J. NOLAN, Respondent.	CORRECTED ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Michael J. Nolan ("Nolan" or "Respondent") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.[1]

[1] Rule 102(e)(3)(i) provides, in relevant part, that:

> The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

Document 33 of 37

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement of Michael J. Nolan ("Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Nolan, age 47, was a certified public accountant licensed to practice in the State of New Jersey from 1985 until 2005. He served as Chief Financial Officer of United Rentals, Inc. ("URI") from September 1997 until December 2002, when he was terminated.

2. URI is a Delaware corporation based in Greenwich, Connecticut. URI is a holding company that primarily conducts operations through its wholly owned subsidiary, United Rentals (North America), Inc. URI is one of the largest equipment rental companies in the world with a network of rental locations in the United States, Canada, and Mexico. URI's common stock is registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") and trades on the New York Stock Exchange.

3. On December 12, 2007, the Commission filed a complaint against Nolan in the United States District Court for the District of Connecticut (SEC v. Michael J. Nolan (Civil Action No. 03:07-cv-01833-AHN)). On April 8, 2008, the court entered an order permanently enjoining Nolan, by consent, from future violations of Section 17(a) of the Securities Act of 1933, Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13b2-1 and 13b2-2 thereunder, and from aiding and abetting future violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder.

4. The Commission's complaint alleged, among other things, that over a two year reporting period from 2000 through 2002, Nolan engaged in a series of fraudulent sale-leaseback transactions designed both to recognize revenue prematurely and to inflate profit generated from the sales. The complaint alleges that as a result of Nolan's actions, URI materially misstated its financial condition and operating results in filings with the Commission, in offering documents, and in other statements to investors.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent Nolan's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that Nolan is suspended from appearing or practicing before the Commission as an accountant.

By the Commission.

Nancy M. Morris
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 57745 / April 30, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13029

In the Matter of ROBERT MACGREGOR, Respondent.	ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Robert MacGregor ("MacGregor" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that

1. From November 2003 through at least January 2005 (the "Relevant Period"), MacGregor was an employee of, and associated with, Duncan Capital LLC ("Duncan Capital"), a broker-dealer registered with the Commission. MacGregor, 42 years old, is a resident of New York, New York.

2. On April 11, 2008, a final judgment was entered by consent against MacGregor, permanently enjoining him from aiding and abetting future violations of Section 15(b)(7) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 15b7-1 thereunder, in the civil action entitled Securities and Exchange Commission v. Michael W. Crow, et al., Civil Action Number 07 Civ. 3814 (CM), in the United States District Court for the Southern District of New York.

3. The Commission's First Amended Complaint (the "complaint") alleges that, during the Relevant Period, Duncan Capital's sole business was arranging private investment in public equity ("PIPE") offerings for small cap companies. As the placement agent, Duncan Capital solicited investors and received a fee from the issuers based on the amounts it raised. MacGregor conducted brokerage activities for Duncan Capital on many of these PIPE offerings. MacGregor knew that he was not registered with, and that he was required to be registered with, the National Association of Securities Dealers and knew that he had not passed the examinations required in order to conduct his activities. During the Relevant Period, the complaint further alleges that MacGregor received hundreds of thousands of dollars in commissions as a result of his brokerage activities.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent MacGregor's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act, that Respondent MacGregor be, and hereby is, barred from association with any broker or dealer with the right to reapply for association after one (1) year to the appropriate self-regulatory organization, or if there is none, to the Commission;

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a

customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson

By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 57741 / April 30, 2008

Admin. Proc. File No. 3-12384

In the Matter of the Application of

NASDAQ STOCK MARKET, LLC

For Review of Action Taken by the

CONSOLIDATED TAPE ASSOCIATION

ORDER REMANDING CASE TO ADMINISTRATIVE LAW JUDGE FOR ISSUANCE OF INITIAL DECISION PURSUANT TO RULE OF PRACTICE 360

On June 30, 2006, The Nasdaq Stock Market, LLC ("Nasdaq"), a member of the Consolidated Tape Association ("CTA"), petitioned for review of action taken by the CTA Operating Committee pursuant to Section 11A(b)(5) of the Securities Exchange Act of 1934 1/ and Exchange Act Rule 608(d). 2/ On March 23, 2006, the CTA Operating Committee voted to impose on Nasdaq a new entrant fee of $833,862 to join the CTA Plan. 3/ Nasdaq alleged that the new entrant fee was excessive and constituted an unlawful denial of access to the CTA's

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1/ 15 U.S.C. § 78k-1(b)(5) (providing that, upon application by an aggrieved person, any prohibition or limitation of access to services by a registered securities information processor "shall" be subject to Commission review). The CTA is registered as an exclusive securities information processor. See Securities Exchange Act Rel. No. 12035 (Jan. 22, 1975), 8 SEC Docket 1099 (granting registration to the CTA).

2/ 17 C.F.R. § 242.608(d) (providing that the Commission "may, in its discretion," entertain appeals in connection with the implementation or operation of any effective national market system plan).

3/ The new entrant fee also entitled Nasdaq to join the Consolidated Quotation ("CQ") Plan. Nasdaq's petition contests the application of the entry fee to Nasdaq's entry into the CQ Plan, as well as the CTA Plan.

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By order dated June 14, 2007 (the "Order"), we accepted jurisdiction over Nasdaq's petition. Noting that disputes involving registered securities information processors, national market system plans, or transaction reporting plans under Exchange Act Section 11A and the rules thereunder are governed by the Rules of Practice, we directed that an administrative law judge be designated to preside over the case. We also determined that the record before us was insufficient to permit the necessary determinations and directed the parties and any interested persons, including the then Division of Market Regulation, now the Division of Trading and Markets (hereinafter the "Division"), to address a series of questions. Those questions were set forth in the Order.

In accordance with the Order, a law judge was appointed to preside over the proceeding. The law judge conducted a hearing on November 8 and 9, 2007, during which the parties called numerous witnesses and introduced exhibits into evidence. At the conclusion of the hearing, the law judge set a briefing schedule for post-hearing submissions. Briefs were filed by the parties and the Division as amicus curiae. Once the briefing was completed, the law judge transmitted the record to the Secretary for decision by the Commission, without preparing an initial decision with findings, conclusions, and supporting reasons pursuant to Rule of Practice 360(b). 4/ The transcripts of the pre-hearing conferences indicate that the law judge believed that the Order did not require him to make any findings or conclusions with supporting reasons.

We recognize that the Order did not explicitly instruct the law judge to prepare an initial decision, but we intended our decision designating a law judge to preside over the proceeding to include the preparation of an initial decision in accordance with Rule of Practice 360(a)(1). Unlike the law judge, we have not observed the parties and witnesses who appeared and testified at the two-day hearing. As the presiding officer at the hearing, the law judge is in the best position to make findings of fact, including credibility determinations, and resolve any conflicts in the evidence. Our review of the record cannot replace the law judge's personal experience with the witnesses.

4/ 17 C.F.R. § 201.360(b) (stating that "[a]n initial decision shall include: findings and conclusions and the reasons or basis therefor, as to all the material issues of fact, law or discretion presented on the record and the appropriate order, sanction, relief, or denial thereof").

Accordingly, it is ORDERED that the proceeding be, and it hereby is, remanded to the administrative law judge for issuance of an initial decision; and it is further

ORDERED that the initial decision be filed with the Secretary of the Commission within 120 days from the date of this remand order.

By the Commission.

Nancy M. Morris
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2732 / April 30, 2008

In the Matter of the Application of KENNETH W. CORBA For Consent to Associate with San Juan Capital Partners LLC	ORDER GRANTING CONSENT TO ASSOCIATE PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940

Pursuant to a consent order entered on July 16, 2006, Kenneth W. Corba ("Corba") is barred from association with any investment adviser, with a right to reapply for association after one year from the date of the order. In the Matter of Kenneth W. Corba, Investment Company Act Release No. 1391 (June 16, 2006). Mr. Corba has applied for consent to associate as a portfolio manager with San Juan Capital Partners LLC, an investment adviser registered in Puerto Rico.

Mr. Corba was the former chief executive officer, chief investment officer and a managing director of PEA Capital LLC, the investment sub-adviser to several PIMCO funds; he was also portfolio manager for the PIMCO Growth Fund and the PIMCO Select Growth Fund. In the administrative proceedings against him, the Commission alleged that Mr. Corba had been enjoined by consent on June 13, 2006, in *SEC v. Treadway, et al.*, Case Number 04 Civ. 3464 (VM), from violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5, Sections 206(1) and 206(2) of the Investment Advisers Act, and Section 34(b) of the Investment Company Act of 1940. The civil complaint alleged that Mr. Corba negotiated and approved timing arrangements with another entity in return for that entity's long-term investment of "sticky assets" in a mutual fund and a hedge fund from which PEA Capital earned management fees; the complaint further alleged that Mr. Corba failed to disclose the arrangements in the PIMCO funds' prospectuses.

The Application represents that:

- Hector Mayol, the managing director of San Juan Capital Partners will be Mr. Corba's principal supervisor;
- Samuel Ramirez, Jr., the firm's chief investment officer, will supervise Mr. Corba in Mayol's absence.
- Mr. Corba's supervisor will review trades on a daily basis, and will conduct a monthly and quarterly performance review of accounts that had securities activity. The Application represents that "[p]articular attention will be placed on

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statements made to current or prospective investors in pooled investment vehicles, if any are to be offered, to ensure that all practices are in compliance with antifraud rules."

- Mr. Corba will "only manage portfolios introduced through the Firm's main office in New York or the Puerto Rico branch with the prior approval of Samuel Ramirez, Jr. for main office accounts and Hector Mayol for Puerto Rico accounts."
- Mr. Corba "will not assume or perform any training, principal, supervisory, or managerial duties for the Firm," and "will exert discretionary authority over accounts only based upon pre-approved objectives by [his] direct supervisor."

In reliance upon the representations made by Mr. Corba and San Juan Capital Partners LLC,[1] the Commission has concluded that the applicant has made a satisfactory showing that the proposed association is consistent with the public interest.

Accordingly, it is ORDERED that the application submitted on behalf of Mr. Corba be, and hereby is, granted.

It is FURTHER ORDERED that the Commission's grant of consent to associate be, and is, conditioned upon compliance by Mr. Corba and San Juan Capital Partners LLC with applicable securities laws and regulations promulgated by Puerto Rico and the State of New York regarding the registration of investment advisers and investment adviser representatives.

By the Commission.

Nancy M. Morris
Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

[1] All of those representations and terms and conditions of employment not specifically listed are incorporated in this order by reference.

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UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 57740 / April 30, 2008

Admin. Proc. File No. 3-12729

In the Matter of the Application of MATTHEW BRIAN PROMAN c/o Randy Scott Zelin Randy Scott Zelin, P.C. 675 Old Country Road Westbury, New York 11590 For Review of Action Taken by NASD	ORDER DISMISSING APPLICATION FOR REVIEW

I.

On July 20, 2007, NASD denied a request by Matthew Brian Proman for relief from sanctions imposed on him pursuant to a February 26, 1998 Decision and Order of Acceptance of Offer of Settlement ("Settlement Agreement"). On August 20, 2007, Proman appealed the denial of his request to the Commission. On September 12, 2007, Financial Industry Regulatory Authority ("FINRA") moved on NASD's behalf to dismiss Proman's application for review on the grounds that the Commission lacks jurisdiction over the matter. 1/ For the reasons discussed below, we find that we lack jurisdiction over Proman's appeal and consequently dismiss his application for review.

1/ On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of NASD and the member regulation, enforcement and arbitration functions of the New York Stock Exchange. See Securities Exchange Act Rel. No. 56146 (July 26, 2007), 72 Fed. Reg. 42,190 (Aug. 1, 2007) (SR-NASD-2007-053). Because the action here was taken before that date, we continue to use the designation NASD.

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NASD filed a complaint against Proman in July 1997 alleging that Proman arranged to have an imposter take the Series 7 Qualification Exam on his behalf in March 1995 and that Proman failed to respond to NASD requests for information related to the investigation of that allegation. 2/ In December 1997, Proman submitted, through counsel, an Offer of Settlement to NASD to resolve the charges against him. The Offer of Settlement stated that it was submitted voluntarily and waived Proman's right to appeal any written decision by NASD. On February 26, 1998, NASD entered a Decision and Order based on the Offer of Settlement barring Proman, censuring him, and fining him $50,000.

Nine years later, on May 25, 2007, Proman filed a request with NASD seeking to vacate the bar imposed as part of the 1998 settlement which had, he claimed, a continuing adverse effect on him. 3/ In the request, Proman stated that he did not contest the validity of the settlement nor did he have any intention to associate with an NASD member firm or to otherwise re-enter the securities industry. On July 20, 2007, NASD denied Proman's request. This appeal followed on August 20, 2007.

II.

Our authority to review an action of a self-regulatory organization ("SRO"), including NASD, is governed by Section 19(d) of the Securities Exchange Act of 1934. Section 19(d) authorizes Commission review of an SRO action that (1) imposes a final disciplinary sanction on any member or person associated with a member; (2) denies membership or participation to any applicant; (3) prohibits or limits any person in respect to access to services offered by such organization or a member of the organization; or (4) bars any person from becoming associated with a member. 4/ If we find that we do not have jurisdiction, we must dismiss the proceeding. 5/ We conclude that we do not have jurisdiction to consider Proman's application for review.

2/ The parties agree as to the facts.

3/ Proman states that the record of the bar is accessible to anyone who researches his background. He asserts that the existence of the bar impedes his current business activities although those activities are unrelated to the securities industry.

4/ 15 U.S.C. § 78s(d).

5/ Sky Capital LLC, Exchange Act Rel. No. 55828 (May 30, 2007), 90 SEC Docket 2201, 2205.

In Larry Saylor, we found that we lacked jurisdiction over Saylor's request that we review NASD's refusal to vacate a thirty-two year old principal bar. 6/ We found that the NASD's action in refusing to vacate Saylor's bar was not disciplinary. We explained that "a 'disciplinary action' is 'an action that responds to an alleged violation of an SRO rule or Commission statute or rule, or an action in which a punishment or sanction is sought or intended.'" 7/ We concluded that NASD's action denying Saylor's motion was "collateral to the underlying disciplinary action in which Saylor has already been sanctioned." 8/

As in Saylor, NASD did not invoke its disciplinary procedures, did not determine that Proman had violated a statute or rule, and did not impose a final disciplinary sanction on him. These actions occurred in the 1998 NASD decision, to which Proman consented. Here, like Saylor, Proman's request to vacate the bar is collateral to the underlying disciplinary action.

We further found in Saylor that, because NASD's action merely denied Saylor collateral relief from his principal bar, NASD's denial of Saylor's request did not constitute a denial of membership or participation. 9/ We believe the same result pertains to Proman. NASD's action in rejecting Proman's request did not deny or condition Proman's membership or participation in NASD, nor did it bar him from becoming associated with an NASD member, membership or

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6/ Larry A. Saylor, Exchange Act Rel. No. 51949 (June 30, 2005), 85 SEC Docket 3118.

7/ Id. at 3121, citing Lance E. Van Alstyne, 53 S.E.C. 1093, 1098 (1998). See also Sky Capital, 90 SEC Docket at 2206 (quoting Russell A. Simpson, 53 S.E.C. 1042, 1046 (1998)).

8/ Saylor, 85 SEC Docket at 3121.

9/ Id. at 3122.

association that, in any event, Proman did not request and does not want. 10/ The NASD decision here only refused to remove the bar imposed in the earlier decision. 11/

We also conclude that Proman has not been denied access to services. A denial of access involves a denial or limitation of "the applicant's ability to utilize one of the fundamentally important services offered by the SRO." 12/ Such services must be "central to the function of the SRO," such as access to an exchange trading floor or registration as a market maker. 13/ Proman identifies no such services to which he has been denied access by virtue of NASD's refusal to vacate its earlier imposed sanctions.

Proman notes that we have vacated bars in the past and argues that, as a result, we have the power to vacate an NASD bar. However, the cases cited by Proman involved relief from bars

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10/ Proman suggests that, if he sought to become associated with a member firm, he could obtain vacatur of his bar. While Article III, Section 3(d) of the By-Laws permits a member to apply to associate a disqualified person, that provision only provides for association notwithstanding a disqualification, such as a bar. It does not lift the bar. Moreover, to obtain such relief, among other things, the member must demonstrate that neither it nor the designated supervisor has a disciplinary history, the nature and scope of the disqualified person's association, and the type of supervision the member will provide the disqualified person. See, e.g., Citadel Sec. Corp., Exchange Act Rel. No. 49666 (May 7, 2004), 82 SEC Docket 3249 (denying firm's application to associate statutorily disqualified person).

11/ The Commission has consistently held that refusing collateral relief does not constitute an action by NASD over which the Commission has jurisdiction. Saylor, 85 SEC Docket at 3122 (in denying collateral motion "NASD did not . . . impose a final disciplinary sanction"); Warren B. Minton, Jr., 55 S.E.C. 1170, 1176 (2002) ("When [NASD] denied [a] motion to set aside the default, the NASD merely rejected [a] collateral attack" and did not impose disciplinary sanctions); Van Alstyne, 53 S.E.C. at 1097 ("We lack authority under Section 19(d) to review [NASD's denial of motion to set aside default] because the . . . order does not fall within the actions enumerated under Section 19(d)(1)").

12/ Morgan Stanley & Co., Inc., 53 S.E.C. 379, 385 (1997).

13/ Id. See, e.g, Scattered Corp., 52 S.E.C. 812, 813 (1996) (finding denial of access for exchange's refusal to process firm's request to register as market maker); William T. Higgins, 48 S.E.C. 713, 718 (1987) (exchange denied member's request to install telephone connection on exchange floor to non-member customers).

imposed in Commission-instituted administrative proceedings, not SRO proceedings. 14/ Consequently, Exchange Act Section 19(d) and its limitations on our jurisdiction over actions taken by SROs such as NASD did not apply. 15/

Proman requests removal of the bar against him because it disadvantages him in his non-securities business. As we have stated previously, "SRO action 'is not reviewable merely because it adversely affects the applicant.'" 16/ For the reasons indicated above, we conclude that we do not have jurisdiction to consider his appeal.

Accordingly, IT IS ORDERED that the Motion of the Financial Industry Regulatory Authority, Inc. to Dismiss Application for Review be, and it hereby is, granted.

By the Commission.

Nancy M. Morris
Secretary

14/ Salim B. Lewis, Exchange Act Rel. No. 54054 (June 28, 2006), 88 SEC Docket 1103 (granting petition to vacate bar order imposed in settlement of Commission administrative proceeding in light of Presidential pardon and judicial vacatur of injunction underlying bar); Edward I. Frankel, Exchange Act Rel. No. 49002 (Dec. 29, 2003), 81 SEC Docket 3778 (granting petition to vacate bar imposed in Commission administrative proceeding); Ciro Cozzolino, Exchange Act Rel. No. 49001 (Dec. 29, 2003), 81 SEC Docket 3769 (same); Stephen S. Wien, Exchange Act Rel. No. 49000 (Dec. 29, 2003), 81 SEC Docket 3758 (same).

15/ Proman asks that we direct NASD, now FINRA, to establish prospectively a formal procedure allowing barred individuals to request that NASD vacate the sanctions against them. Exchange Act Section 19(d) does not provide for such relief.

16/ Sky Capital, 90 SEC Docket at 2206 (quoting Joseph Dillon & Co., 54 S.E.C. 960, 964 (2000)).